

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

3 TEXAS ENTERTAINMENT ) Docket No. A 17-CA-594 DAE  
4 ASSOCIATION, INC. )  
5 vs. ) Austin, Texas  
6 GLENN HEGAR, COMPTROLLER )  
7 OF PUBLIC ACCOUNTS OF )  
8 THE STATE OF TEXAS, IN )  
9 HIS OFFICIAL CAPACITY ) October 23, 2019

10 TRANSCRIPT OF BENCH TRIAL  
11 BEFORE THE HONORABLE DAVID A. EZRA  
12 Volume 2 of 2

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26 Proceedings reported by computerized stenography,  
27 transcript produced by computer.

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Defendant's

(None.)

08:41:35 1 THE CLERK: 17-CV-594, Texas Entertainment  
09:03:26 2 Association, Incorporated vs. Glenn Hegar.

09:03:37 3 THE COURT: Good morning.

09:03:39 4 The Court would note the presence of all counsel.  
09:03:43 5 And we have the witness on the stand.

09:03:46 6 Again, I want to reiterate something that I said  
09:03:51 7 yesterday and I think it's important to note. I have no  
09:03:54 8 preconceptions in this case. And my questioning counsel  
09:03:59 9 about -- both sides about the state's and/or the  
09:04:05 10 plaintiff's positions has to do with my trying to get a  
09:04:10 11 clear understanding of what it is that you're arguing and  
09:04:16 12 how it is that you're approaching this matter.

09:04:22 13 At first blush, I mean, we -- we've all -- I  
09:04:27 14 mean, this is a serious matter. Obviously it's serious to  
09:04:29 15 the operators of these businesses and it's certainly  
09:04:33 16 serious to the state that has -- the comptroller has an  
09:04:37 17 interest in this matter, and the Court takes it seriously.  
09:04:40 18 We joked a bit about it because it is kind of a crazy  
09:04:44 19 thing, you know, I mean, but the case is nuanced. It  
09:04:51 20 really is.

09:04:53 21 And counsel is shaking their head. I mean, the  
09:04:56 22 arguments here are nuanced. And so, you've gotta be  
09:04:59 23 careful, particularly in looking at the statute, I wanted  
09:05:02 24 to -- yesterday, I wanted to be sure I understood exactly  
09:05:08 25 what we were talking about here in terms of how the state

09:05:14 1 is approaching this. And now I understand the state is  
09:05:17 2 taking the position -- which I wasn't entirely clear  
09:05:23 3 about. It had nothing to do with the First Amendment  
09:05:25 4 issue. The First Amendment issue was an expression issue.  
09:05:29 5 This issue is not so much an expression issue as it is an  
09:05:36 6 issue of whether the matter and mode in which this was  
09:05:38 7 implemented and the way it is implemented caused some  
09:05:46 8 constitutional injury, which is different than an  
09:05:49 9 expression issue. It's not an expression issue.

09:05:52 10 So I don't want anybody to think that the Court  
09:06:01 11 is attempting to be flippant about this because I  
09:06:04 12 certainly am not. And I certainly don't want anybody to  
09:06:07 13 think that I have a preconceived determination. Quite  
09:06:11 14 frankly, I have -- as I sit here today, I have no idea how  
09:06:14 15 I'm going to rule in this because it is nuanced; it's not  
09:06:21 16 as simple as it seems.

09:06:26 17 Quite frankly, this would be a much easier case  
09:06:31 18 if we were simply talking about latex clothing you could  
09:06:37 19 buy off the rack. And I don't think anybody here  
09:06:45 20 disagrees that there are items of clothing and some, in  
09:06:50 21 some circles, quite popular that are made of various kinds  
09:06:53 22 of plastic. Some simulated leather, latex and other --  
09:07:01 23 and I don't necessarily mean sexually suggestive objects.  
09:07:05 24 I'm talking about pants, and jackets, and other things  
09:07:09 25 that are made of these kinds of materials.

09:07:14 1           You know, when I was a young man and I remember  
09:07:22 2 very well how polyester was regarded as a joke. I mean,  
09:07:27 3 people would joke about it, they had these polyester  
09:07:30 4 double-knit suits, which were -- I even owned one once.  
09:07:34 5 They were awful. And now, high-grade polyester could be  
09:07:42 6 more expensive than -- I actually had a case involving  
09:07:47 7 this, so I know. High-grade polyester could be more  
09:07:52 8 expensive and considered a finer fabric in fashion  
09:07:55 9 designers' repertoire than some of the highest grade,  
09:08:02 10 nonsynthetic fabrics and it's no joke.

09:08:06 11           You could buy a \$3,000 dress made out of very  
09:08:11 12 high-grade polyester. So I think that in looking at this  
09:08:22 13 -- and obviously if we had a jury here, I would be  
09:08:25 14 conducting this trial in a very, very different way. You  
09:08:29 15 would hear nothing out of me or very little out of me.  
09:08:33 16 But we don't have a jury and I have the luxury of being  
09:08:37 17 able to stop lawyers and ask them questions in the middle  
09:08:41 18 of the proceeding because we don't have a jury, and this  
09:08:46 19 is a very focused hearing.

09:08:47 20           So I wanted to get that on the record because I  
09:08:50 21 don't want anybody to leave thinking that I've already  
09:08:52 22 made up my mind, which I wish I had, actually. It would  
09:08:59 23 be a lot easier for me if I made up my mind.

09:09:01 24           All right. Now, we have this gentleman on the  
09:09:03 25 stand. Let's finish him up. Sir, I would remind you that

09:09:10 1 you remain under oath.

09:09:11 2 THE WITNESS: Yes, sir, your Honor.

09:09:14 3 PAUL ZAVALA, called by the Plaintiff, duly sworn.

09:09:14 4 DIRECT EXAMINATION (Resume)

09:09:14 5 BY MR. WALLACE:

09:09:21 6 Q. Good morning. Mr. Zavala, how are you?

09:09:22 7 A. Good. Good morning.

09:09:24 8 Q. I want to bring you back to your testimony from  
09:09:26 9 yesterday. I believe you testified yesterday that latex  
09:09:33 10 did not qualify under the statute as proper clothing or  
09:09:38 11 covering for an entertainer; is that correct?

09:09:41 12 A. That's correct.

09:09:42 13 Q. All right. And that if an entertainer or performer  
09:09:50 14 at a gentlemen's club was wearing something that was not  
09:09:55 15 of cloth material or fabric, whether it be latex, gel,  
09:10:01 16 foam, or whatever, that simply didn't cut it as far as the  
09:10:06 17 enforcement division of the Comptroller's Office was  
09:10:09 18 concerned.

09:10:10 19 Is that a fair summary of the opinion you gave  
09:10:13 20 yesterday?

09:10:13 21 A. Yes.

09:10:14 22 Q. Okay. I would like to show you a picture. May I  
09:10:33 23 approach the witness, your Honor?

09:10:34 24 THE COURT: Yeah. Sure.

09:10:36 25 Q. (BY MR. WALLACE) I'm going to hand you a picture of a

09:10:40 1 woman and ask if you recognize that as a outfit in which  
09:10:46 2 the woman is wearing a latex dress?

09:10:58 3 THE COURT: Well, in fairness, counsel, I don't  
09:10:59 4 know if it says latex anywhere. It says PVC.

09:11:03 5 MR. WALLACE: Okay.

09:11:04 6 THE COURT: PVC is polyvinyl chloride. There may  
09:11:08 7 be another word for latex. I don't know. Latex may be a  
09:11:12 8 subcategory of PVC. I don't know. But it is plastic of  
09:11:17 9 some sort.

09:11:18 10 MR. WALLACE: You're absolutely -- your Honor,  
09:11:20 11 you're absolutely right. Thank you.

09:11:22 12 Q. (BY MR. WALLACE) Mr. Zavala, would you agree with the  
09:11:25 13 material as identified on the piece of paper you have  
09:11:28 14 before you is high quality PVC?

09:11:31 15 MR. ABRAMS: Objection, your Honor. The witness  
09:11:33 16 doesn't --

09:11:33 17 THE COURT: Yeah. He wouldn't have any idea  
09:11:35 18 whether that was high quality or not.

09:11:38 19 Q. (BY MR. WALLACE) Fair enough.

09:11:39 20 Would you agree that the document you have in  
09:11:40 21 your hand identifies this as high quality PVC?

09:11:45 22 MR. ABRAMS: Your Honor, I'm not sure where this  
09:11:47 23 questioning's leading.

09:11:48 24 THE COURT: Well, I don't know, but we're going  
09:11:49 25 to find out.



09:11:53 1 A. Based on one of the bullet points here, yes, that is  
09:11:56 2 listed as the material.

09:11:58 3 Q. (BY MR. WALLACE) Assuming that to be true, it's not  
09:12:04 4 cloth or fabric material, correct?

09:12:05 5 A. Correct.

09:12:05 6 Q. And if an entertainer or a performer at a gentlemen's  
09:12:10 7 club was wearing this outfit which covers her buttocks and  
09:12:13 8 her breasts, she would nevertheless be in violation of the  
09:12:18 9 rule imposed by the comptroller, right?

09:12:21 10 A. That's correct.

09:12:22 11 Q. Thank you. Now, I'd like to show you another --

09:12:39 12 THE COURT: I guess this is proof positive you  
09:12:41 13 can buy anything on Amazon.

09:13:00 14 Q. (BY MR. WALLACE) I'm going to hand you another  
09:13:02 15 document with a picture of a woman wearing a dress. Do  
09:13:04 16 you see that woman wearing a dress?

09:13:06 17 A. Yes, I do.

09:13:06 18 Q. Now, I'd ask that you assume with me for purposes of  
09:13:09 19 this question that this dress is of a hundred percent  
09:13:14 20 cotton. Are you with me?

09:13:15 21 A. Yes.

09:13:16 22 Q. She's -- her breasts are covered and her buttocks is  
09:13:19 23 covered, correct?

09:13:20 24 A. Yes.

09:13:20 25 Q. And so are her genitals, for that matter, right?

09:13:23 1 A. Correct.

09:13:23 2 Q. If an entertainer or performer at a gentlemen's club  
09:13:26 3 were wearing this dress, would she fall under the ambit of  
09:13:30 4 the rule imposed by the comptroller to assess the \$5 fee  
09:13:35 5 statute?

09:13:36 6 MR. ABRAMS: Objection. This calls for a legal  
09:13:37 7 conclusion and the witness lacks personal knowledge.

09:13:42 8 THE COURT: Well, he could testify as to what he  
09:13:44 9 would consider it to be. He was somebody who was doing a  
09:13:46 10 substantial number of these investigations for the  
09:13:49 11 comptroller, and he testified that he did. And he's the  
09:13:53 12 one who would go out there and look and is charged with  
09:13:56 13 knowing and understanding what he was looking at. I mean,  
09:13:59 14 I trust that you're not taking the position he didn't know  
09:14:01 15 what he was doing.

09:14:02 16 MR. ABRAMS: Well, your Honor, he was not an  
09:14:05 17 enforcement at the time that the rule -- the amended rule  
09:14:08 18 took effect. So that's why there's an issue that his  
09:14:11 19 testimony is irrelevant to the amended rule.

09:14:15 20 MR. WALLACE: But, your Honor, he's testified  
09:14:17 21 this entire time that as an enforcement officer, if he saw  
09:14:19 22 a woman in latex, he would have assessed the fee.

09:14:23 23 THE COURT: Yes, he did. I'll overrule the  
09:14:26 24 objection.

09:14:26 25 Q. (BY MR. WALLACE) Let me ask the question again.

09:14:28 1 THE COURT: Certain parts of the rule remain the  
09:14:30 2 same.

09:14:32 3 Q. (BY MR. WALLACE) Let me ask the question again.  
09:14:35 4 Assume with me that this woman's dress that you have  
09:14:38 5 before you is 100 percent cotton, covers her breasts, her  
09:14:45 6 areola, her breasts, her buttocks and her genitalia.  
09:14:49 7 Assume with me she wears that dress to perform as an  
09:14:52 8 entertainer at a gentlemen's club.

09:14:55 9 Would you enforce the \$5 fee assessment against  
09:14:57 10 that club if the entertainers wore this dress?

09:15:00 11 A. No.

09:15:15 12 Q. Can you please explain to Judge Ezra what on Earth is  
09:15:18 13 the difference as far as enforcement of a fee by the  
09:15:22 14 comptroller between the woman in the cotton dress on the  
09:15:25 15 left on the screen and the woman in the high quality PVC  
09:15:30 16 on the right?

09:15:31 17 MR. ABRAMS: Objection. That calls for a legal  
09:15:33 18 conclusion.

09:15:33 19 THE COURT: The Court can see for itself. I  
09:15:37 20 don't think I need him to tell me.

09:15:40 21 MR. WALLACE: Okay.

09:15:43 22 THE COURT: It would be an opinion from him.  
09:15:46 23 That would be all it would be.

09:15:48 24 MR. WALLACE: Fair enough, your Honor.

09:16:34 25 Your Honor, we've used the -- for purposes of Mr.

09:16:38 1 Zavala's testimony what has been marked by us as Exhibit  
09:16:43 2 27, the woman depicted in the high quality PVC. And we  
09:16:48 3 have marked as Exhibit 28 the woman in the cotton dress.  
09:16:52 4 And we would ask that those exhibits be admitted into  
09:16:56 5 evidence.

09:16:59 6 MR. ABRAMS: Your Honor, he never saw these  
09:17:01 7 documents before, so we'd object on that ground if they  
09:17:04 8 weren't produced in discovery. And pursuant to your  
09:17:06 9 ruling yesterday, we'd object to the extent they're  
09:17:09 10 admitted for any substantive purpose. You know, they  
09:17:12 11 would only need to be -- they could only be admitted for  
09:17:14 12 purposes of demonstrative evidence only, like the exhibit  
09:17:18 13 yesterday.

09:17:18 14 THE COURT: I'll receive them.

09:17:20 15 MR. WALLACE: Thank you, your Honor.

09:17:28 16 THE COURT: But I think counsel needs to  
09:17:29 17 understand that I don't have the rule in front of me, but  
09:17:33 18 that garment is a painted-on. It isn't in liquid form.  
09:17:38 19 It's a different -- it's different.

09:17:44 20 MR. WALLACE: No. I would agree, your Honor,  
09:17:46 21 that at the time that that woman in the high quality PVC.

09:17:52 22 THE COURT: According to Amazon, high quality  
09:17:54 23 PVC.

09:17:55 24 MR. WALLACE: Right. The material was dry.

09:17:58 25 THE COURT: Right. Well, I don't think it didn't

09:18:00 1 -- well, I don't know. How do I know whether it was ever  
09:18:02 2 -- yeah. It was liquid at some point obviously.

09:18:05 3 MR. WALLACE: Right.

09:18:06 4 THE COURT: It's plastic.

09:18:08 5 MR. WALLACE: Right. And that will be part of  
09:18:11 6 our case-in-chief when we put another witness -- a  
09:18:13 7 different witness on the stand.

09:18:19 8 THE COURT: I mean, it was not an animal. No  
09:18:21 9 animal grew that.

09:18:23 10 Q. (BY MR. WALLACE) That's right. Last, but not least,  
09:18:27 11 on pictures today, Mr. Zavala, do you know a woman by the  
09:18:31 12 name of Kim Kardashian?

09:18:35 13 A. Unfortunately, yes.

09:18:37 14 Q. Very famous woman, correct?

09:18:38 15 A. Yes.

09:18:39 16 Q. Have you ever --

09:18:39 17 THE COURT: She's famous because she's famous.

09:18:44 18 MR. WALLACE: That's correct. I agree, your  
09:18:47 19 Honor.

09:18:47 20 THE COURT: I have yet to find anybody to tell me  
09:18:50 21 what her talent was, in any event.

09:18:52 22 MR. WALLACE: I have to agree with you, your  
09:18:54 23 Honor.

09:18:56 24 Q. (BY MR. WALLACE) I'm going to show you one last  
09:18:58 25 series of pictures.

09:19:04 1 May I approach the witness, your Honor? There  
09:19:10 2 are three pictures in the document I just handed you. And  
09:19:15 3 you recognize that as Kim Kardashian, right?

09:19:19 4 A. Yes.

09:19:20 5 Q. And underneath the pictures, it says what it really  
09:19:22 6 takes to get into those latex dresses the Kardashians  
09:19:26 7 love. Do you see that?

09:19:27 8 A. Yes.

09:19:29 9 Q. Now, yesterday, I think you testified you've never  
09:19:32 10 seen anybody wear latex, either in person or visually  
09:19:40 11 somewhere. You've seen people wear latex, haven't you?

09:19:44 12 A. Now that I'm looking at this picture, yes.

09:19:47 13 Q. Okay. Clearly her buttocks or genitalia and her  
09:19:53 14 breasts are covered, correct?

09:19:56 15 A. Covered, yes.

09:19:57 16 Q. And if she -- but if she wore this dress and  
09:20:02 17 performed as a performer at a gentlemen's club, you would  
09:20:10 18 assess the \$5 fee against the gentlemen's club, correct?

09:20:15 19 MR. ABRAMS: Objection, your Honor. I think we  
09:20:16 20 should clarify whether counsel is asking about before the  
09:20:20 21 amended rule took effect or after the amended rule.

09:20:22 22 THE COURT: I think that's a valid objection. I  
09:20:26 23 think you need to.

09:20:29 24 MR. WALLACE: Fair enough.

09:20:31 25 Q. (BY MR. WALLACE) Before the rule went into effect, if

09:20:34 1 Kim Kardashian showed up wearing one of these outfits and  
09:20:40 2 performed as an entertainer at a gentlemen's club, you  
09:20:46 3 would have assessed the \$5 fee against that club, correct?

09:20:50 4 A. Yes.

09:20:51 5 Q. And after the rule went into effect, the same answer  
09:20:54 6 would apply, correct?

09:21:04 7 A. Can you repeat that?

09:21:05 8 Q. After the rule went into effect, your answer would be  
09:21:08 9 the same. You would assess the \$5 fee against the club if  
09:21:12 10 Kim Kardashian showed up wearing a latex dress as depicted  
09:21:17 11 in the exhibit before you?

09:21:19 12 A. According to the amendment of the rule, yes.

09:21:22 13 Q. Your Honor, we'd offer this as Exhibit 29.

09:21:27 14 MR. ABRAMS: Your Honor, the same objection.

09:21:28 15 THE COURT: It will be received. Look, you know,  
09:21:30 16 we're talking about these things and we know this case is  
09:21:35 17 going on appeal, and we have three very bright judges,  
09:21:39 18 very capable judges on the court of appeals are going to  
09:21:41 19 look at this. They're going to wonder what we're looking  
09:21:43 20 at.

09:21:45 21 So I understand your objection. If we had a  
09:21:52 22 jury, it would be different, I think, but we don't. And  
09:21:57 23 I'm in a position to understand the difference between a  
09:22:00 24 demonstrative exhibit and something that's substantive.

09:22:07 25 But I want to make sure that when the three

09:22:10 1 judges of the court of appeals panel look at this, they  
09:22:13 2 know what we're talking about. You know, it's very  
09:22:17 3 frustrating to have us banter and I say, no, we're not,  
09:22:21 4 and then, they don't have any idea what in the world we're  
09:22:24 5 looking at. Maybe that's good or bad. I don't know. But  
09:22:29 6 I think, in all fairness, they have to have an opportunity  
09:22:31 7 to see what we're looking at.

09:22:35 8 Q. (BY MR. WALLACE) Mr. Zavala, isn't it true that there  
09:22:45 9 is no purpose for the amended rule but to bring latex  
09:22:50 10 clubs within the scope of the \$5 fee?

09:22:55 11 MR. ABRAMS: Objection. Calls for a legal  
09:22:56 12 conclusion.

09:22:57 13 THE COURT: Yeah. He's not equipped to answer  
09:22:59 14 that question. The objection's sustained. He is not a  
09:23:02 15 policy maker. He can't speak for the controller. His job  
09:23:06 16 is to go out as a functionary.

09:23:10 17 MR. WALLACE: If I could try to --

09:23:11 18 THE COURT: That's like asking a -- you know, I  
09:23:14 19 was a platoon leader and then, later, I held a higher  
09:23:18 20 position. Fine. It would be like asking a squad leader  
09:23:26 21 who is given an order by a first sergeant and who had been  
09:23:33 22 given an order by me, who had been given an order by the  
09:23:38 23 battalion commander, who had been given an order by the  
09:23:41 24 general to do something and then, asking the squad leader,  
09:23:44 25 what's the purpose of this order?



09:23:47 1           You know, I think that we are -- he's not -- and  
09:23:51 2 this is no comment on him as an individual, but he is well  
09:23:58 3 below the chain of command to know exactly what the  
09:24:02 4 purpose is. The only person that could answer that  
09:24:05 5 question, I assume, would be the -- either the controller,  
09:24:10 6 himself, or somebody who was intimately involved in the  
09:24:14 7 decisionmaking.

09:24:17 8           MR. WALLACE: I would more than agree with you,  
09:24:20 9 your Honor. My problem is that we subpoenaed the  
09:24:24 10 comptroller, himself, to be here to answer that very  
09:24:27 11 question, and the state moved to quash and obtained an  
09:24:31 12 order from the magistrate to quash. And unfortunately,  
09:24:35 13 he's the only man I have to answer -- ask the question.  
09:24:38 14 But if I can try to.

09:24:39 15           THE COURT: I can't remember, did you appeal that  
09:24:41 16 to me?

09:24:42 17           MR. WALLACE: We did not, your Honor.

09:24:43 18           THE COURT: Okay.

09:24:47 19           MR. WALLACE: But I will move on. I hear you  
09:24:49 20 loud and clear.

09:24:53 21           THE COURT: There might be other people other  
09:24:55 22 than the comptroller who would be in a position to speak  
09:24:58 23 for the agency. I don't know who that might be. But you  
09:25:02 24 know, the bottom line is that I don't think there's any  
09:25:08 25 question at all, zero question at all that the purpose of

09:25:16 1 the amendment was to bring latex clubs within the ambit of  
09:25:26 2 the statute. But why else would they amend the statute?

09:25:29 3 MR. WALLACE: Thank you, your Honor.

09:25:30 4 THE COURT: If they -- I don't think the state  
09:25:33 5 would deny that the reason they did it was to bring it  
09:25:36 6 within the ambit of the statute. Now, why they had it in  
09:25:41 7 the ambit of the statute is another story. That's another  
09:25:48 8 inquiry. I know the state's stated reason is because  
09:25:52 9 they're trying to -- I don't know, something about  
09:25:55 10 drinking and nude dancing, or something like that, causing  
09:26:02 11 raucous behavior.

09:26:09 12 Q. (BY MR. WALLACE) Mr. Zavala, as an enforcement  
09:26:25 13 officer, if you were to visit a nightclub, bar,  
09:26:30 14 restaurant, or similar commercial enterprise, you could  
09:26:34 15 see all kinds of different entertainment or performances  
09:26:40 16 going on, right?

09:26:44 17 A. I'm not certain of that.

09:26:46 18 Q. Well, would you agree with me that you could see a  
09:26:49 19 dance on a stage?

09:26:50 20 A. I would, yes.

09:26:52 21 Q. Would you agree with me that you could see dancing on  
09:26:53 22 a bar?

09:26:55 23 A. Yes.

09:26:56 24 Q. You've seen the movie Coyote Ugly?

09:26:58 25 A. I have not.

09:26:59 1 Q. Okay. Are you familiar with the concept of  
09:27:02 2 bartenders or waitresses getting up on a bar and dancing  
09:27:06 3 to entertain those who are within the bar?

09:27:08 4 A. Yes.

09:27:09 5 Q. Okay. You could entertain a customer by sitting with  
09:27:16 6 him and flirting with him and talking with him, correct?

09:27:21 7 A. I don't agree. No.

09:27:29 8 Q. A dancer provocatively dressed, instead of taking a  
09:27:38 9 drink order and going to the bar and getting a drink,  
09:27:40 10 instead, sitting down with a customer and flirts with him,  
09:27:43 11 you wouldn't consider that entertainment, sir?

09:27:51 12 A. It's not part of a performance. It's not an act.

09:27:56 13 Q. You're absolutely right. It's not an act or a  
09:27:58 14 performance, correct? But the statute doesn't require  
09:28:00 15 that, does it?

09:28:14 16 A. I don't know. I'm not seeing that in the statute.

09:28:17 17 Q. Well, let's look at it. It's up on the screen before  
09:28:21 18 you, Section 102.051 of the Texas Business and Commerce  
09:28:28 19 Code, provides that -- and it's in subsection 2, sexually  
09:28:40 20 oriented business means a bar, a nightclub, bar,  
09:28:43 21 restaurant, or similar commercial enterprise that provides  
09:28:45 22 for an audience of two or more individuals, live nude  
09:28:51 23 entertainment, or live nude performances.

09:28:59 24 Did I read that correctly, sir?

09:29:01 25 A. Yes, you did.

09:29:02 1 Q. Would you agree with me that they can either be  
09:29:04 2 providing entertainment to fall within the statute or  
09:29:07 3 there could be live nude performances, correct?

09:29:10 4 A. Correct.

09:29:11 5 Q. It could be either one, right?

09:29:14 6 A. Yes.

09:29:15 7 Q. Would you agree with me that someone can be dressed  
09:29:18 8 in a manner that makes them nude under the statute, sit  
09:29:21 9 and flirt with a customer and spend an hour or two with  
09:29:24 10 him and entertain him at a gentlemen's club?

09:29:37 11 A. No. I don't agree, because --

09:29:39 12 Q. Well, what on Earth do you think she's doing from  
09:29:43 13 your perspective as an enforcement officer?

09:29:46 14 A. From my perspective, if I'm having a conversation  
09:29:49 15 with somebody, it doesn't necessarily constitute  
09:29:52 16 entertainment.

09:30:01 17 Q. If the entertainers or performers at a bar,  
09:30:05 18 restaurant, or other commercial enterprise are fully  
09:30:10 19 clothed in cloth or fabric-like material, but the  
09:30:15 20 waitresses and wait staff are nude, does that qualify as a  
09:30:20 21 sexually oriented business in your opinion as an  
09:30:21 22 enforcement officer?

09:30:23 23 A. I'm sorry. Can you repeat that again?

09:30:25 24 Q. Certainly. If the people who are classified as  
09:30:29 25 entertainers or performers are fully clothed in

09:30:34 1 fabric-like material, but the waitresses serving alcohol  
09:30:40 2 and food to the customers are nude, under the terms of the  
09:30:46 3 statute, does that make it a sexually oriented business  
09:30:48 4 against whom you would enforce the statute?

09:30:53 5 MR. ABRAMS: Your Honor, I think this line of  
09:30:55 6 questioning has been asked and answered at this point, and  
09:30:57 7 he's giving his opinion about --

09:30:58 8 THE COURT: No. This is a different line  
09:31:00 9 entirely. I don't think anybody's asked about whether, in  
09:31:07 10 his view, there would be a violation of the statute if  
09:31:11 11 they -- and there are businesses around that have this  
09:31:15 12 type of mode of operation where the baristas, or  
09:31:27 13 whatever -- I remember there was a coffee shop somewhere  
09:31:32 14 in this area, I don't remember where it was, but they had  
09:31:34 15 kind of a bikini baristas, or topless baristas, or  
09:31:39 16 something like that, and then, they had -- there was  
09:31:42 17 another place that had very scantily clad women serving  
09:31:46 18 food. That is a mode of operation of some of these  
09:31:51 19 businesses.

09:31:52 20 So no. I think he can answer the question if he  
09:31:56 21 can answer it.

09:32:02 22 A. Based on that statement alone, no.

09:32:13 23 Q. (BY MR. WALLACE) Waitresses, fully nude, serving  
09:32:17 24 alcohol to customers, so long as there's not a stage  
09:32:20 25 performance or a lap dance being provided, then there's no

09:32:23 1 assessment of the \$5 fee. That's your testimony, correct?

09:32:30 2 A. Yes.

09:32:31 3 Q. And this fee and this rule is specifically targeted  
09:32:35 4 to go after gentlemen's clubs that have expressive dancing  
09:32:39 5 and expressive performances on stage, as far as an  
09:32:44 6 enforcement officer, that's your opinion, correct?

09:32:47 7 MR. ABRAMS: Objection. That calls for a legal  
09:32:49 8 conclusion.

09:32:49 9 THE COURT: Sustained. He's not an expert. He  
09:32:52 10 could testify about what he knows and this is well beyond  
09:32:55 11 his --

09:32:56 12 MR. WALLACE: Fair enough.

09:32:57 13 THE COURT: -- capacity.

09:32:58 14 MR. WALLACE: I think I've made my point.

09:33:02 15 Q. (BY MR. WALLACE) Would you agree that enforcement  
09:33:05 16 officers make decisions and that the comptroller assesses  
09:33:09 17 the \$5 fee sometimes in the total of millions of dollars  
09:33:14 18 against clubs where those decisions are ultimately  
09:33:19 19 overturned by an administrative law judge?

09:33:24 20 A. It's possible. Yes.

09:33:25 21 Q. All right. And for the Court's edification, when you  
09:33:31 22 make an assessment as an enforcement officer, the  
09:33:36 23 comptroller eventually sends a bill, or a statement, or  
09:33:39 24 something, to the taxpayer, telling them how much they  
09:33:43 25 owe, correct?

09:33:45 1 A. That sounds right. Yes.

09:33:46 2 Q. And the taxpayer can ask for a redetermination of  
09:33:48 3 that amount, correct?

09:33:50 4 A. Correct.

09:33:51 5 Q. They can ask for a redetermination to determine that  
09:33:54 6 they're not even a sexually oriented business, correct?

09:33:57 7 A. Yes.

09:33:57 8 Q. And when that's done, it ultimately makes it to the  
09:34:01 9 State Office of Administrative Hearings, correct?

09:34:04 10 A. Yes.

09:34:05 11 Q. And evidence is put on and testimony is provided to  
09:34:08 12 an administrative law judge, correct?

09:34:13 13 A. I'm not certain of the process.

09:34:16 14 Q. Have you ever testified over at the State Office of  
09:34:18 15 Administrative Hearings?

09:34:19 16 A. Yes, I have.

09:34:20 17 Q. Okay. So you're familiar with providing testimony to  
09:34:23 18 an administrative law judge, correct?

09:34:24 19 A. Yes.

09:34:25 20 Q. And the administrative law judge then can make a  
09:34:28 21 decision as to whether or not the business is or is not a  
09:34:34 22 sexually oriented business, in the first place, correct?

09:34:36 23 A. Yes, they can.

09:34:37 24 Q. And if he reverses the comptroller's decision, the  
09:34:44 25 comptroller can reverse the administrative law judge and

09:34:47 1 say, too bad, my decision stands, correct?

09:34:50 2 A. I'm not aware of that.

09:34:52 3 Q. As an enforcement --

09:35:14 4 THE COURT: I'm going to be honest with you,  
09:35:16 5 counsel. I don't know whether you're going to get there  
09:35:17 6 or not, but I am not at all -- I mean, we've had a lot of  
09:35:26 7 testimony about dark latex or dark paint. I don't know,  
09:35:30 8 do we have exhibits here that actually show what these  
09:35:33 9 people look like in a way that we could see it? There was  
09:35:36 10 a blurry photograph, there were un -- you couldn't make it  
09:35:39 11 out.

09:35:42 12 Because we don't have anything in the record  
09:35:45 13 right now that I'm aware of where one can actually see  
09:35:50 14 what is being complained of here. We've got all kinds of  
09:35:56 15 pictures in here about women who are dressed in, you know,  
09:36:02 16 latex dresses. We've got pictures of women who are  
09:36:05 17 wearing other suggestive clothing. Some would be in  
09:36:11 18 violation, others would not be in violation. But we don't  
09:36:19 19 have anything in the record about what this actually looks  
09:36:25 20 like.

09:36:27 21 Do you have anything that you're going to put in?

09:36:29 22 MR. WALLACE: I don't have a picture to put in  
09:36:31 23 with this witness, your Honor.

09:36:32 24 THE COURT: I don't care about this witness. I'm  
09:36:34 25 talking about during the trial.



09:36:36 1 MR. ALLEN: Yes.

09:36:37 2 MR. WALLACE: Yes, your Honor.

09:36:38 3 THE COURT: Because I've seen some pictures here.  
09:36:39 4 I don't know whether these are pictures of the women  
09:36:41 5 dancing that are wearing this stuff, but you can't make it  
09:36:43 6 out. They're so blurry and so undiscernible that I  
09:36:47 7 certainly can't make it out. And I don't think the court  
09:36:50 8 of appeals judges are going to be able to make it out  
09:36:52 9 either unless they have much better eyes than I do.

09:36:55 10 MR. WALLACE: I hear you loud and clear, Judge.  
09:36:57 11 And I assume that the pictures you are looking at are  
09:37:00 12 Exhibit 14, and those are not the pictures I'm making  
09:37:03 13 reference to.

09:37:03 14 THE COURT: Okay. Well.

09:37:05 15 MR. WALLACE: But I will put some pictures in the  
09:37:07 16 record through a different witness.

09:37:08 17 THE COURT: All right.

09:37:09 18 MR. WALLACE: Of what we're talking about. Just  
09:37:11 19 two last areas of inquiries with this witness, if I may.

09:37:14 20 Q. (BY MR. WALLACE) As an enforcement officer, sir,  
09:37:21 21 would you assess the \$5 fee statute against a cabaret  
09:37:25 22 during a timeframe in which the club was not open for  
09:37:31 23 business?

09:37:37 24 A. Not if there's anything to observe, no.

09:37:40 25 Q. And as an enforcement officer, can you imagine any

09:37:52 1 member of the Comptroller's Office assessing the \$5 fee  
09:37:56 2 statute against a business during a timeframe in which the  
09:38:00 3 business had burned down to the ground and there were no  
09:38:05 4 customers, dancers, performers, or even employees inside  
09:38:09 5 the business?

09:38:10 6 MR. ABRAMS: Objection. Calls for speculation.

09:38:11 7 THE COURT: Sustained. He's not the person to  
09:38:18 8 answer that question.

09:38:20 9 Q. (BY MR. WALLACE) You would not, as an enforcement  
09:38:22 10 officer, enforce the \$5 fee statute against a business  
09:38:25 11 entity that had burned down to the ground, correct?

09:38:30 12 A. It's not a business at that point. No.

09:38:32 13 Q. Thank you. I'll pass the witness, your Honor.

09:38:46 14 THE COURT: Do you have any questions for him?

09:38:49 15 MR. ABRAMS: Yes, your Honor.

09:38:55 16 CROSS-EXAMINATION

09:39:06 17 BY MR. ABRAMS:

09:39:06 18 Q. Good morning, Mr. Zavala.

09:39:08 19 A. Morning.

09:39:09 20 Q. I just want to clear some things up with your  
09:39:11 21 testimony. Understandably, it may have been a little  
09:39:15 22 confusing, some of the questions you were asked.

09:39:17 23 You never enforced the amended rule, correct?

09:39:19 24 A. I did not.

09:39:21 25 Q. Okay. Would you agree with me that the amended rule,

09:39:24 1 which is up here before you in (a)(1), says that  
09:39:28 2 clothing -- says that paint, latex, wax, gel, foam,  
09:39:33 3 coatings, and other substances applied to the body in a  
09:39:36 4 liquid or semiliquid state are not clothing; is that  
09:39:40 5 correct?

09:39:40 6 A. That's correct.

09:39:42 7 Q. And you couldn't tell from the images that the  
09:39:46 8 plaintiff's counsel showed you whether or not any part of  
09:39:49 9 the dresses were liquid latex that was painted on,  
09:39:52 10 correct?

09:39:53 11 A. That's correct.

09:39:55 12 Q. And if a dancer was wearing a dress that was not  
09:39:58 13 painted on and it covered everything, you wouldn't assess  
09:40:03 14 a tax, correct?

09:40:03 15 A. Could you repeat that?

09:40:04 16 Q. Sure. If a dancer was wearing a dress that was  
09:40:07 17 not --

09:40:07 18 THE COURT: Counsel, you know, you folks need to  
09:40:12 19 get your story straight, okay? We had objections from  
09:40:15 20 your co-counsel earlier that he wasn't the one who  
09:40:18 21 assessed anything, and now you're asking him a leading  
09:40:23 22 question essentially about whether he would be the one to  
09:40:27 23 assess the tax, which it isn't, it's a fee. But that's  
09:40:31 24 another story.

09:40:33 25 So.

09:40:34 1 MR. ABRAMS: I'm just trying to clean up the  
09:40:37 2 questions that were directed to him in direct examination,  
09:40:42 3 your Honor.

09:40:42 4 THE COURT: Okay. Well, you opened the door.

09:40:44 5 Q. (BY MR. ABRAMS) Mr. Zavala, you testified yesterday  
09:40:47 6 that you didn't do collection, correct?

09:40:49 7 A. That's correct.

09:40:50 8 Q. What are collections?

09:40:51 9 A. The liability's already been established and we're  
09:40:56 10 making a collection attempt.

09:40:58 11 Q. So, Mr. Zavala, you were a field officer for the  
09:41:03 12 comptroller?

09:41:06 13 A. With these SOB observations and assessments, it would  
09:41:10 14 have been 2015.

09:41:12 15 Q. Okay. Did you ever stop making SOB field visits?

09:41:18 16 A. Yes.

09:41:19 17 Q. When did you stop doing that?

09:41:22 18 A. The best of my knowledge, the end of 2015.

09:41:27 19 Q. Did you ever act as a field officer after October 28,  
09:41:31 20 2016?

09:41:35 21 A. No.

09:41:37 22 Q. What is your current position at the comptroller?

09:41:41 23 A. I'm an enforcement officer in the taxpayer service  
09:41:44 24 area of our field office.

09:41:46 25 Q. And how long have you held that position for?

09:41:52 1 A. Since 2016.

09:41:55 2 Q. And in that position, are you involved in enforcement  
09:41:59 3 of the SOB fee?

09:42:00 4 A. Not at all.

09:42:01 5 Q. Okay. No further questions, your Honor.

09:42:09 6 THE COURT: Anything else?

09:42:10 7 MR. WALLACE: I have no redirect, your Honor.

09:42:11 8 THE COURT: Okay. You could step down.

09:42:14 9 MR. ALLEN: Your Honor, at this time, we'd move  
09:42:15 10 for a trial amendment to apply or, rather, to add the  
09:42:19 11 discriminatory enforcement claim to enforcement of the \$5  
09:42:23 12 fee statute against latex clubs prior to the adoption of  
09:42:27 13 amended rule. You heard during the cross-examination of  
09:42:30 14 Officer Zavala that he enforced this statute against latex  
09:42:38 15 clubs prior to the amended rule, but did not have any  
09:42:40 16 experience after the amended rule.

09:42:42 17 The testimony he offered as to enforcement  
09:42:46 18 against non-cabarets or lack of enforcement against  
09:42:51 19 non-cabarets and the enforcement against latex clubs shows  
09:42:54 20 that we have a claim of discriminatory enforcement prior  
09:42:58 21 to adoption of the amended rule. Apparently the  
09:43:00 22 comptroller was acting as if the amended rule had already  
09:43:02 23 been passed back when he was doing enforcement.

09:43:08 24 MS. HARGIS: We certainly object to that. This  
09:43:11 25 court has already ruled when they attempted to amend to

09:43:13 1 add the statutory challenges the first time that it was  
09:43:17 2 too late. This is certainly too late. This case, what  
09:43:23 3 they have always pleaded was about the amended rule and  
09:43:25 4 not the statute. And if anything, those facts that  
09:43:27 5 they're now complaining of go to their due process claim  
09:43:30 6 and whether the clubs had notice prior to the amendment of  
09:43:33 7 the rule or not.

09:43:34 8 This is not a separate claim and challenge to the  
09:43:37 9 statute based on all of the pleadings and all of the  
09:43:39 10 discovery and the Court's prior rulings in this case.

09:43:43 11 THE COURT: Well, there is a place and the rules  
09:43:48 12 do provide that parties may under certain circumstances be  
09:43:52 13 allowed to conform their complaint to evidence where it is  
09:44:01 14 some -- where justice so requires. And the district court  
09:44:05 15 is given a great deal of latitude in that.

09:44:08 16 But in this case, I'm going to deny that request  
09:44:10 17 because the information here could and should have been  
09:44:15 18 within the knowledge of the plaintiff long before this  
09:44:19 19 trial began. After all, the plaintiff is actually  
09:44:23 20 representing clubs for which these enforcement actions  
09:44:27 21 were initiated, and they would certainly know whether  
09:44:31 22 those enforcement actions would have taken place prior to  
09:44:36 23 the amendment.

09:44:36 24 So the objection is -- to the amendment is  
09:44:40 25 sustained. I'm not going to allow you to amend at this

09:44:43 1 point. There's no justification for it.

09:44:46 2 MR. ALLEN: Thank you, your Honor.

09:44:50 3 MR. WALLACE: Your Honor, our next witness will  
09:44:53 4 be Mr. Steve Craft. But would it be okay with the Court  
09:44:57 5 if we take a five or a ten-minute break?

09:44:59 6 THE COURT: Sure. Of course.

09:45:00 7 MR. WALLACE: Thank you.

09:51:52 8 (Recess.)

10:09:31 9 THE COURT: The Court would note the presence of  
10:09:36 10 all counsel. Yes, sir.

10:09:38 11 MR. WALLACE: May we proceed?

10:09:39 12 THE COURT: You may.

10:09:40 13 MR. WALLACE: Your Honor, at this time, we would  
10:09:41 14 call Mr. Steve Craft.

10:09:43 15 THE COURT: All right.

10:09:51 16 THE CLERK: Raise your right hand. You do  
10:10:04 17 solemnly swear that the testimony you are about to give in  
10:10:07 18 this case now before the Court will be the truth, the  
10:10:08 19 whole truth, and nothing but the truth, so help you God?

10:10:11 20 THE WITNESS: I do.

10:10:14 21 STEVE CRAFT, called by the Plaintiff, duly sworn.

10:10:14 22 DIRECT EXAMINATION

10:10:14 23 BY MR. WALLACE:

10:10:19 24 Q. Good morning, sir.

10:10:19 25 Would you please introduce yourself to Judge

10:10:22 1 Ezra?

10:10:22 2 A. My name is Steve Craft.

10:10:23 3 Q. And can you tell us what your position is with the

10:10:30 4 Texas Entertainment Association?

10:10:31 5 A. I'm a member and a representative.

10:10:33 6 Q. And by whom are you regularly employed?

10:10:39 7 A. I serve as officer on several different corporations.

10:10:44 8 Burch Management is a parent corporation. And then,

10:10:46 9 there's numerous other ones that operate businesses here

10:10:49 10 in the state of Texas.

10:10:50 11 Q. Okay. And is it fair to say that you are the

10:10:53 12 president of -- or an officer of a number of

10:10:58 13 establishments we colloquially call gentlemen's clubs?

10:11:03 14 A. Yes, sir.

10:11:04 15 Q. We could also call them adult cabarets?

10:11:07 16 A. You could.

10:11:07 17 Q. And you have been an officer, president, or held some

10:11:10 18 capacity in sports bars?

10:11:14 19 A. Correct. Correct. Restaurant, sports bars.

10:11:17 20 Q. All right. And to move this along pretty quick, can

10:11:22 21 you give an identity of a sports bar in which you've been

10:11:26 22 an officer and perhaps the identity of a club that's more

10:11:29 23 likely known as a gentlemen's club?

10:11:31 24 A. Sneaky Pete's.

10:11:34 25 THE COURT: What are the location of these



10:11:36 1 places? Is this here in Austin, Texas? I mean, this  
10:11:40 2 involves the entire state of Texas that we're talking  
10:11:42 3 about here?

10:11:43 4 MR. WALLACE: It does, your Honor. And if I  
10:11:44 5 could ask that question.

10:11:45 6 Q. (BY MR. WALLACE) You are the president of or officer  
10:11:47 7 of companies that are gentlemen's clubs in the Dallas  
10:11:51 8 market, the Fort Worth market, the Houston market,  
10:11:53 9 throughout the state of Texas, correct?

10:11:55 10 A. Correct. Dallas/Fort Worth.

10:11:59 11 THE COURT: I know, but if he's listing the names  
10:12:01 12 of people -- of clubs, he needs to give us the location of  
10:12:06 13 the clubs or it doesn't mean anything.

10:12:08 14 MR. WALLACE: Thank you, your Honor.

10:12:09 15 Q. (BY MR. WALLACE) Would you do that? Can you give a  
10:12:11 16 list of the clubs, the adult cabaret clubs and their  
10:12:16 17 location?

10:12:16 18 A. The ones that I'm currently an officer of are Baby  
10:12:21 19 Dolls Saloon in Dallas, Texas, Baby Dolls Fort Worth in  
10:12:25 20 Fort Worth, Texas, the Fare in Arlington, Texas, Cabaret  
10:12:31 21 Royale in Dallas, Texas, and Chicas -- Michael's  
10:12:36 22 International, Chicas Locas in Houston, Texas.

10:12:40 23 THE COURT: Now, are these all what we would call  
10:12:42 24 gentlemen's clubs? Or are they conventional sports bars?

10:12:45 25 THE WITNESS: These are all gentlemen's clubs.

10:12:47 1 Our concept is a sports bar, but they're sexually oriented  
10:12:50 2 business -- gentlemen's clubs, also.

10:12:51 3 THE COURT: All right.

10:12:52 4 Q. (BY MR. WALLACE) And are you also or have you been an  
10:12:55 5 officer of Sneaky Pete's or any other sports bar?

10:13:00 6 A. Yes. Sneaky Pete's in Lewisville, Texas. Sports  
10:13:07 7 City in Durant, Oklahoma. That's not Texas. Sports City  
10:13:12 8 in Mesquite, Texas, Sports City in Rowlett, Texas, Sports  
10:13:19 9 City in The Colony, Doc's Pizza in Frisco, Texas. I'm  
10:13:31 10 sure there's others over the past few years that I'm  
10:13:34 11 blanking on.

10:13:35 12 Q. That's fair. But those are more traditionally called  
10:13:37 13 sports bars, as opposed to cabaret, correct?

10:13:41 14 A. That is correct.

10:13:41 15 Q. All right. And how long have you been in this  
10:13:45 16 business?

10:13:46 17 A. Since 1987.

10:13:49 18 Q. Are you familiar with latex that is worn at  
10:13:55 19 gentlemen's clubs throughout the state of Texas?

10:13:57 20 A. Yes, I am.

10:13:58 21 Q. All right. Can you please tell the Court what latex  
10:14:05 22 is, where it comes from, and how it's applied to a dancer  
10:14:12 23 at a cabaret?

10:14:13 24 A. Sure. Latex, in its raw form, is a milky liquid  
10:14:18 25 substance. All latex comes from a latex plant, latex

1 tree. From that point, it can be bottled, typically  
2 ammonia's put in it to keep it from solidifying. There is  
3 ammonia-free latex that they will put some other type  
4 substance in to keep it from hardening or solidifying at  
5 that point. So it stays in the bottle.

6 They can take it and spread it out in sheets,  
7 tint it to whatever color they want. When they put it out  
8 in sheets, they would cut it and make into a -- cut a  
9 pattern out.

10 As far as a liquid latex, when it's applied to  
11 someone, it's not painted on. It's done with sponges.  
12 There's four coats put on. Four coats would be equivalent  
13 to a surgical glove. In fact, if you took your hand and  
14 stuck it in latex, pulled it out, let it dry, suck it  
15 back, did that four times, you would have the equivalent  
16 of latex gloves, surgical gloves that you could peel off.

17 It's applied to the breast. It's applied with  
18 sponges. You put four coats on, letting each coat dry.  
19 Sometimes the girls use hair dryers. But it takes three  
20 or four minutes to dry. You cannot see through it at all.  
21 Latex -- there is no clear latex. It's white, thick,  
22 milky when it comes out. So even raw form, you can't see  
23 through it.

24 But four coats are applied. It's not real pretty  
25 when it's put on. So the girls will put powder, makeup,

1 some kind of decorative over the top of it. And then, so  
2 that it won't -- that won't rub off on themselves or a  
3 customer's coat, they'll put a -- like a lacquer spray  
4 over it that will seal it. A lot of them use hairspray  
5 and it seals it.

6 The only way to get it off is peeled off. It  
7 doesn't flake off, and it's not going to peel off on its  
8 own. You're going to have to tug it and peel it off. So  
9 that's kind of.

10 THE COURT: Does it peel off in one --  
11 essentially one contiguous -- it bonds together, so if you  
12 can even start it, say, at the side, you could -- you  
13 would peel it off like you would peel off a decal, for  
14 instance.

15 THE WITNESS: Exactly. And just like on a decal,  
16 sometimes you're peeling off the decal and you pull the  
17 wrong way and it tears, well, it will tear off in strips.  
18 But if you pull it -- just correct pressure and just pull,  
19 yes, it will peel off just like a solid decal. And you  
20 will have the latex -- now, when it comes off, it's going  
21 to shrink up because when it goes on, adheres to the body,  
22 it tightens up. So it's going to shrink up, and it would  
23 be difficult to put back on in that same manner as when  
24 you first applied it.

25 THE COURT: Okay.

10:17:17 1 Q. (BY MR. WALLACE) When the \$5 fee rule was enacted by  
10:17:23 2 the Texas legislature, were there clubs you were  
10:17:27 3 personally associated with that chose to go the latex club  
10:17:32 4 route, as opposed to the topless club route, in order to  
10:17:37 5 avoid the payment of the \$5 fee?

10:17:42 6 A. Yes.

10:17:43 7 Q. And that would include Chicas Locas in Houston,  
10:17:47 8 Texas?

10:17:47 9 A. Yes. It was dual -- it was a fee and the ordinance,  
10:17:50 10 but yes.

10:17:55 11 Q. And it wasn't until 2017 that a new rule that was  
10:17:59 12 adopted by the comptroller came into effect where they  
10:18:02 13 said latex doesn't apply, correct?

10:18:04 14 A. That is correct.

10:18:07 15 Q. Before 2017, did the comptroller ever come to any  
10:18:11 16 club you were associated with that was a latex club and  
10:18:16 17 say latex doesn't count?

10:18:20 18 A. No. I had a visit around that time from three  
10:18:25 19 different enforcement officers that came in about 12:30 in  
10:18:29 20 the morning, it's after midnight, and they wanted to look  
10:18:34 21 at the licenses. They looked around and what they told my  
10:18:37 22 GM, because I was on the phone with them when he was  
10:18:40 23 talking to them, is everything looks good. So we had no  
10:18:46 24 -- we had them in there, but there wasn't any problems  
10:18:49 25 that we knew of.

10:18:50 1 THE COURT: When was this, sir?

10:18:51 2 THE WITNESS: That was right before the rule was  
10:18:54 3 enforced. I would say late 2016.

10:18:57 4 THE COURT: You're talking about the amendment?

10:19:00 5 THE WITNESS: Yes. Yes, sir.

10:19:02 6 Q. (BY MR. WALLACE) Now --

10:19:03 7 THE COURT: They told you everything was okay?

10:19:06 8 THE WITNESS: They told my general manager and I  
10:19:08 9 was on the phone with them when he's talking to them. We  
10:19:10 10 have a policy, any time we have enforcement come in, I  
10:19:13 11 have to be notified, even if it's 2:00 or 3:00 in the  
10:19:17 12 morning.

10:19:17 13 THE COURT: Sure.

10:19:18 14 Q. (BY MR. WALLACE) Now, Mr. Craft, you have testified  
10:19:23 15 quite a bit about this latex stuff, haven't you?

10:19:27 16 A. Yes, sir.

10:19:27 17 Q. In administrative law judge proceedings, in  
10:19:29 18 depositions, and in trial, correct?

10:19:32 19 A. Yes, sir. Even more than this. We started latex --  
10:19:35 20 we went through this drill in Dallas back in the late  
10:19:40 21 '90s. So this is not new to us.

10:19:43 22 Q. Okay. And do you have a mannequin in your office?

10:19:46 23 A. I do.

10:19:47 24 Q. And does that mannequin have latex applied to its  
10:19:51 25 breasts?

10:19:52 1 A. It does.

10:19:52 2 Q. And you have a picture of that?

10:19:54 3 A. I do.

10:19:54 4 Q. All right. May I approach the witness, your Honor?

10:19:58 5 THE COURT: Yes.

10:20:03 6 Q. (BY MR. WALLACE) Mr. Craft, I'm going to hand you a  
10:20:08 7 picture and ask you to identify it for the Court.

10:20:10 8 A. That's a mannequin in my office that we finally refer  
10:20:13 9 to as Sally.

10:20:14 10 Q. Your Honor, this mannequin -- I mean, this exhibit  
10:20:17 11 was attached to Mr. Craft's affidavit in our proceedings  
10:20:19 12 on our motion for summary judgment, and I would ask that  
10:20:31 13 it be admitted as Plaintiff's Exhibit No. 30.

10:20:34 14 THE COURT: Have you seen this?

10:20:36 15 MR. ABRAMS: Yes, your Honor. We have no  
10:20:38 16 objection.

10:20:38 17 THE COURT: All right. It will be received.

10:20:41 18 Q. (BY MR. WALLACE) Can you see it up on the screen,  
10:20:43 19 Exhibit No. 30?

10:20:44 20 A. Yes, sir.

10:20:44 21 Q. All right. And please tell the Court what this is.

10:20:47 22 A. That's a mannequin with latex on it. Did not put the  
10:20:52 23 make-up or decoration on it. Wanted to show the raw form  
10:20:55 24 of latex. The color on that is called Michael's Mix.  
10:21:00 25 Consequently, the club in Houston is Michael's

10:21:02 1 International Chicas Locas. We order so much -- ordered  
10:21:07 2 so much at the time, that we wanted a certain color, and  
10:21:12 3 they mix it up for us and it's called Michael Mix. It's a  
10:21:18 4 -- the club is mainly Hispanic and we wanted -- needed a  
10:21:21 5 darker tone than what they normally had. So we have our  
10:21:24 6 own blend of latex.

10:21:27 7 THE COURT: What -- I assume that you make sure  
10:21:32 8 that none of these women are allergic to latex.

10:21:36 9 THE WITNESS: Yes, sir, we do. We also have  
10:21:40 10 non-ammonia latex. Typically what people -- what  
10:21:43 11 irritates people is the ammonia. I have had girls that  
10:21:48 12 say, I can't work -- I can't wear that. We do have a  
10:21:52 13 non-ammonia, which is -- it has some other type chemical  
10:21:59 14 in it.

10:21:59 15 THE COURT: What happens when you have a young  
10:22:02 16 woman in your club who is allergic to latex that says, I  
10:22:05 17 can't wear it? Is she just not working in your club?

10:22:10 18 THE WITNESS: She could wear a bikini. The  
10:22:12 19 problem with the bikini -- the reason we went with latex  
10:22:15 20 is on the bikini, a girl could move. She could be  
10:22:20 21 dancing, it could slip. We had a nipple slip on the  
10:22:24 22 Superbowl with Janet Jackson.

10:22:26 23 THE COURT: Certainly right.

10:22:27 24 THE WITNESS: This can't slip. This is not going  
10:22:29 25 anywhere. It would be forceful to take it off, peel it



10:22:32 1 off. So a girl couldn't, if she wanted to, flash. I  
10:22:36 2 mean, they're independent contractors. They're there to  
10:22:38 3 make money. She couldn't flash. It couldn't slip, it  
10:22:44 4 couldn't get hung on something.

10:22:45 5 THE COURT: I suspect also that with the bikini,  
10:22:49 6 part of the buttocks would be exposed and, therefore --  
10:22:54 7 unless it was one of these 1950s style.

10:22:59 8 THE WITNESS: You're absolutely right. And  
10:23:00 9 that's the reason we use the boy shorts is what they wear.

10:23:07 10 THE COURT: Yes. They even call them boy shorts  
10:23:10 11 in Hawaii, where I'm from.

10:23:11 12 THE WITNESS: Right. Either cheerleader shorts,  
10:23:12 13 which would be what a cheerleader on Friday night would  
10:23:17 14 wear at a game, under their skirts, is a boy short is what  
10:23:21 15 they would be wearing.

10:23:22 16 THE COURT: So the short that you're showing on  
10:23:23 17 that mannequin is the typical dress of your dancers in  
10:23:27 18 your clubs.

10:23:28 19 THE WITNESS: Yes. I went out and bought 200  
10:23:30 20 cheerleader briefs a couple of days before we went to the  
10:23:34 21 latex. And then, the person who runs the boutique at the  
10:23:40 22 club, he went out and had these -- I told him what I  
10:23:44 23 wanted. He works with the designer, had these designed,  
10:23:47 24 and that's what they wore majority of the time. But to  
10:23:50 25 make sure we're in compliance, we start off with the

10:23:53 1 cheerleader briefs.

10:23:54 2 THE COURT: Okay.

10:23:55 3 Q. (BY MR. WALLACE) The latex on this particular

10:23:59 4 mannequin is quite brown. Wouldn't you say?

10:24:03 5 A. Yes.

10:24:03 6 Q. All right. Can it come in different colors?

10:24:05 7 A. It does.

10:24:06 8 Q. What colors does it come in?

10:24:09 9 A. You know, they have a variety of colors: Red, blue,  
10:24:12 10 purple, flesh, light tan, dark tan. You can get a mix of  
10:24:18 11 any color you want. I mean, this is a mix that they did  
10:24:21 12 for us if you buy enough of it. But yeah, it comes in a  
10:24:26 13 variety of colors. And we do have some pink, some purples  
10:24:29 14 for decoration. Like I said, I didn't put the decoration  
10:24:34 15 on this because I wanted to show just the raw form of the  
10:24:36 16 latex.

10:24:42 17 Q. If you had -- for the record, I would say I'm average  
10:24:48 18 Caucasian color.

10:24:49 19 A. Right.

10:24:49 20 Q. Could you put latex on me, somewhere on my body that  
10:24:53 21 would be non-see-through to cover up that portion of my  
10:24:57 22 body?

10:24:57 23 A. Yes.

10:24:58 24 Q. And is that what happens inside the clubs for people  
10:25:02 25 who are at the same skin tone than I am?

10:25:04 1 A. If they choose to do that. Yes. Some want it to  
10:25:10 2 stand out. So.

10:25:11 3 Q. Someone wearing latex in your clubs, can you see any  
10:25:14 4 portion of their breasts from the top of the areola down  
10:25:18 5 to the bottom of the breasts?

10:25:19 6 A. Absolutely not.

10:25:20 7 Q. Can you see the sides of the breasts that are covered  
10:25:23 8 with latex?

10:25:23 9 A. No. Everything on the breasts from above -- the  
10:25:27 10 point above the areola is completely covered.

10:25:29 11 Q. Okay. And they wear boy shorts that are similar to  
10:25:36 12 the boy shorts that are shown in Exhibit No. 30?

10:25:38 13 A. That's an actual pair that came from the boutique  
10:25:41 14 which a gentleman named Shafique owns that's inside the  
10:25:45 15 club.

10:25:45 16 Q. And that completely covers the buttocks?

10:25:47 17 A. Yes, sir.

10:25:48 18 Q. Not three quarters, but it covers the whole thing?

10:25:51 19 A. Covers the whole buttocks.

10:26:12 20 Q. I'd like you to turn to Exhibit No. 8. Please.

10:26:18 21 A. Yes, sir.

10:26:19 22 Q. Are you familiar with Exhibit 8? Have you seen this  
10:26:33 23 exhibit before?

10:26:33 24 A. Yes, I have.

10:26:34 25 Q. All right. Who is depicted in Exhibit 8?

10:26:37 1 A. That's Beyonce.

10:26:39 2 Q. And is her buttocks exposed?

10:26:42 3 A. Yes.

10:26:43 4 Q. Where was she performing?

10:26:44 5 A. NRG Stadium in Houston.

10:26:48 6 Q. And at that performance, were you there?

10:26:50 7 A. I was.

10:26:50 8 Q. Was there alcohol being served?

10:26:51 9 A. Yes, sir.

10:26:52 10 Q. Was there an audience of two or more people?

10:26:54 11 A. Yes, sir.

10:26:54 12 Q. Was she giving a live performance?

10:26:59 13 A. Yes, she was.

10:27:00 14 Q. Is she nude, from your perspective, under the

10:27:03 15 definitions contained within the statute?

10:27:05 16 A. Yes, sir.

10:27:07 17 Q. Do you know -- well, I'll get back to that.

10:27:11 18 How many people, if you know, approximately, can

10:27:19 19 fit inside NRG stadium?

10:27:21 20 A. I believe the capacity's around a hundred thousand.

10:27:23 21 Q. Was the stadium full?

10:27:25 22 A. Except -- yeah. Pretty much full.

10:27:31 23 Q. If you'd turn to Exhibit No. 9, please.

10:27:36 24 A. Yes, sir.

10:27:37 25 Q. Are you familiar with Exhibit 9?

10:27:39 1 A. Yes, I am.

10:27:40 2 Q. All right. This depicts women who are performing?

10:27:42 3 THE COURT: Wait. We don't have Exhibit 9 up.

10:27:48 4 MR. WALLACE: Ah, I apologize, your Honor. I  
10:27:58 5 believe Exhibit 8 and 9 have already been admitted into  
10:28:00 6 evidence.

10:28:02 7 THE COURT: I believe so. Yeah. It says NSFW,  
10:28:06 8 not safe for work. Not safe for work, but I guess it's  
10:28:09 9 safe for federal courthouse.

10:28:12 10 MR. WALLACE: That's right, your Honor.

10:28:14 11 THE CLERK: They haven't been admitted.

10:28:15 12 THE COURT: They haven't been admitted? Okay.  
10:28:17 13 She says they haven't been admitted.

10:28:19 14 THE CLERK: Eight and 9, not admitted.

10:28:21 15 MR. WALLACE: We'd ask that Exhibit No. 8 and 9  
10:28:23 16 be admitted into evidence.

10:28:24 17 MR. ABRAMS: Your Honor, just to make our record,  
10:28:26 18 we'd object on the basis that foundation and  
10:28:32 19 authentication of these exhibits.

10:28:33 20 THE COURT: Well, it is what it is. It's a  
10:28:34 21 picture of what appears to be women dancing in rather  
10:28:39 22 scanty costumes, if any costume at all, I think. In part.  
10:28:48 23 It will be received.

10:28:51 24 Q. (BY MR. WALLACE) Mr. Craft, you previously testified  
10:28:55 25 by way of affidavit about this exhibit. You obtained it

10:29:00 1 from the Houston Press publication, correct?

10:29:04 2 A. That is correct.

10:29:04 3 Q. That's a publication that is in Houston, Texas?

10:29:07 4 A. It is.

10:29:07 5 Q. All right. And for purposes of the record, you found

10:29:15 6 it at [www.Houstonpress.com/slideshow/suicide-girls-](http://www.Houstonpress.com/slideshow/suicide-girls-scorch-warehouse-live)

10:29:27 7 [scorch-warehouse-live](http://www.Houstonpress.com/slideshow/suicide-girls-scorch-warehouse-live).

10:29:30 8 A. Correct.

10:29:31 9 Q. And it's from a May 1st, 2017 performance, correct?

10:29:37 10 A. It was from the May 1st article in the Post.

10:29:41 11 Q. Okay. Thank you. And the event occurred on April

10:29:43 12 29th, correct?

10:29:44 13 A. That is correct.

10:29:44 14 Q. 2017.

10:29:46 15 A. Yes.

10:29:46 16 Q. After the enactment of the rule.

10:29:48 17 A. That is correct.

10:29:49 18 Q. Okay. Now --

10:29:50 19 THE COURT: When you say rule, I assume you're

10:29:53 20 talking about the amendment.

10:29:54 21 MR. WALLACE: Yes, your Honor. I apologize.

10:29:58 22 Q. (BY MR. WALLACE) Does this -- the pictures contained

10:30:01 23 within Exhibit 9, which is a multitude of pages, show

10:30:05 24 women whose breasts are exposed?

10:30:10 25 A. Yes.

10:30:10 1 Q. Over the top of the areola?

10:30:12 2 A. Yes, sir. They have electrical tape over the nipple  
10:30:16 3 in a X, but the breasts everywhere else is exposed.

10:30:20 4 Q. And that would be on page 1 of 9 and on page 4 of 9  
10:30:27 5 -- excuse me, 1 of 9, 6 of 9 of Exhibit 9, 7 of Exhibit 9  
10:30:42 6 and 8 of Exhibit 9, correct?

10:30:45 7 A. Correct.

10:30:45 8 Q. All right. And in these various pages, especially on  
10:30:50 9 page 1 of Exhibit 9, is the dancer who's facing away from  
10:30:56 10 the camera, is her buttocks exposed?

10:30:59 11 A. Yes. She would be wearing what would generally be  
10:31:02 12 referred to as a T-back or a G-string.

10:31:06 13 Q. It pretty much shows the entirety of her with  
10:31:08 14 buttocks being exposed, correct?

10:31:10 15 A. The idea is, it could show the anus or portions of  
10:31:17 16 the anus or genitalia. Can't tell from here.

10:31:19 17 Q. Okay. And at -- have you ever been to Warehouse  
10:31:24 18 Live?

10:31:24 19 A. I have not.

10:31:25 20 Q. Okay. Are you familiar with it?

10:31:26 21 A. Yes.

10:31:27 22 Q. Do they serve alcohol, if you know?

10:31:29 23 A. Yes, they do.

10:31:30 24 Q. Do they have audiences?

10:31:31 25 A. Yes, they do.

10:31:32 1 Q. Are there two or more people in attendance?

10:31:37 2 A. Yes.

10:31:37 3 Q. And they provide live entertainment, correct?

10:31:42 4 A. That is correct.

10:31:42 5 Q. Are they nude under the definition of the statute  
10:31:45 6 from your perspective?

10:31:46 7 A. They were this time.

10:31:47 8 Q. Okay. I'd like you to turn to the Exhibit 10. I'll  
10:32:02 9 withdraw that, your Honor.

10:32:04 10 You were here yesterday when Ms. Williams gave  
10:32:08 11 her testimony, correct?

10:32:09 12 A. Correct.

10:32:10 13 Q. Did you hear her testify about how she searched the  
10:32:13 14 social media websites of businesses to determine which  
10:32:16 15 ones were potential targets of the statute and the rule?

10:32:21 16 A. Yes.

10:32:21 17 Q. If you went to search the social media websites of  
10:32:28 18 bars like Tight Ends, Redneck Heaven, Twin Peaks, Wild  
10:32:37 19 Pitch or Knockout Sports Bars, would you be able to see  
10:32:41 20 whether or not they clad their personnel in outfits which  
10:32:48 21 would qualify them as nude under the statute, assuming the  
10:32:52 22 other elements of the statute are met?

10:32:54 23 A. Certainly those websites would show that on their  
10:32:58 24 websites. Absolutely.

10:32:59 25 Q. Okay. And did you go and make an endeavor recently



10:33:05 1 to determine whether or not the bars I listed a moment ago  
10:33:10 2 actually depict states of nudity in their social media  
10:33:15 3 platforms?

10:33:15 4 A. Yes.

10:33:16 5 Q. And would that be what is at Exhibit 11 in your book?

10:33:25 6 A. Yes, sir.

10:33:31 7 Q. Okay. And does that show people in states of nudity  
10:33:36 8 at the various bars I mentioned a moment ago?

10:33:39 9 A. Correct.

10:33:39 10 Q. And you went on the internet and found these, didn't  
10:33:43 11 you?

10:33:43 12 A. I did.

10:33:43 13 Q. Your Honor, Exhibit 11 is a compilation of these  
10:33:50 14 websites, which show as an example women at bars, such as  
10:34:03 15 Tight Ends in League City, Texas, in states of nudity as  
10:34:09 16 defined under the rule and under the statute. And we  
10:34:12 17 would ask that Exhibit 11 be admitted into evidence.

10:34:17 18 MR. ABRAMS: Your Honor, for the record, two  
10:34:18 19 objections. First is relevance, and the second, you know,  
10:34:21 20 we don't know who posted these, when they were --

10:34:23 21 THE COURT: Well, there's an overbroad claim  
10:34:26 22 here, also, I think. Is there not?

10:34:27 23 MR. ABRAMS: There is an overbreadth claim.

10:34:30 24 THE COURT: Okay. And one of the issues here is  
10:34:32 25 whether this statute would capture artistic and other

1 types of activity. For instance, we just saw a photograph  
2 of fairly well-known group. It's not my favorite group,  
3 that's for sure, but nonetheless, a very popular group  
4 which is -- what do they call themselves? Suicide Dolls.

5 THE WITNESS: SuicideGirls.

6 THE COURT: They're very popular among a certain  
7 group of audience, and they dance on stage in a manner  
8 that I think we would all agree violates the letter of  
9 this regulation in terms of nudity. There's no question  
10 about it. And I think that's uncontested under the  
11 definition that I was given by counsel yesterday, which is  
12 the state's position.

13 MR. ABRAMS: Well, I don't think there's been  
14 evidence entered in this case about what -- how the  
15 SuicideGirls -- I believe there's an image, but I don't  
16 think we've seen or heard any testimony about how they  
17 perform.

18 THE COURT: Are you taking -- are you seriously  
19 taking issue with whether that was a legitimate  
20 performance?

21 MR. ABRAMS: No, your Honor. I personally don't.

22 THE COURT: I mean, it's an article. I mean, if  
23 you are, that's fine. But.

24 MR. ABRAMS: I have never heard of the  
25 SuicideGirls before this trial.

10:35:58 1 THE COURT: You hadn't?

10:35:59 2 MR. ABRAMS: No. I hadn't.

10:36:00 3 THE COURT: Well, listen, if I have, then --

10:36:03 4 believe me, I'm 72 years old, I don't listen to

10:36:06 5 SuicideGirls, but I certainly have seen their materials

10:36:10 6 depicted in the media. I mean, that's a fact. But you

10:36:19 7 don't need to do SuicideGirls.

10:36:21 8 I mean, you can go to the San Antonio Ballet, by

10:36:27 9 the way, where the women wear -- when they don't have the

10:36:33 10 full leggings on, some of them wear in a modern dance

10:36:41 11 performances. They wear what looks like a very thin

10:36:48 12 material. I don't know, is leotard the right word? Is

10:36:54 13 that the right word? Yeah. When their buttocks is

10:36:57 14 clearly exposed more than would be allowed under the

10:37:01 15 statute, and where, by the way, during intermission, they

10:37:05 16 serve drinks and people are allowed to drink.

10:37:09 17 So that would be captured by this statute.

10:37:17 18 MR. ABRAMS: I think it would depend on if all

10:37:19 19 the conditions of --

10:37:19 20 THE COURT: The only thing it would depend on is

10:37:21 21 whether the state sent somebody to the ballet. That's

10:37:24 22 what it would depend on. Because the statute doesn't say

10:37:29 23 it's restricted to men's clubs. That's what they're

10:37:32 24 trying to prove, and you're saying that it doesn't. That

10:37:34 25 would be discriminatory enforcement.

10:37:36 1 MR. ABRAMS: Well, it applies to nightclubs, bars  
10:37:38 2 and restaurants. So I'm not sure ballet would be a  
10:37:41 3 nightclub, bar or restaurant.

10:37:41 4 THE COURT: Okay. Is that discriminatory  
10:37:43 5 enforcement?

10:37:45 6 MR. ABRAMS: I think it's -- no. I think it's  
10:37:48 7 enforcement of the statute that is allowed to define the  
10:37:52 8 specific places that it applies to.

10:37:55 9 THE COURT: But the whole idea is that you don't  
10:37:56 10 want women to be performing in a nude state in front of  
10:38:02 11 people who are drinking. Isn't that the justification for  
10:38:05 12 the statute? That's what you say is the justification for  
10:38:08 13 the statute, right?

10:38:10 14 MR. ABRAMS: Right. I believe my co-counsel  
10:38:11 15 yesterday spoke to those justifications.

10:38:14 16 THE COURT: Okay. And so, if people are at a  
10:38:18 17 play or they're at a cabaret, which has -- or a restaurant  
10:38:27 18 that has live entertainment and it has somebody singing in  
10:38:32 19 a leotard that exposes her buttocks, a singer now in a  
10:38:38 20 leotard with heels that exposes her buttocks, you would  
10:38:42 21 agree with me that partially now -- and I'm not saying  
10:38:46 22 she's nude, okay? I'm not saying she's indecently dressed  
10:38:51 23 no more than you would see in a one-piece -- modern  
10:38:54 24 one-piece bathing suit, she would be in violation of that  
10:39:00 25 law or the rule, right?

10:39:04 1 MR. ABRAMS: She would need to -- the business  
10:39:07 2 would need to meet all the requirements.

10:39:09 3 THE COURT: The requirements are pretty simple.  
10:39:12 4 You serve alcohol, you have entertainment, and you're one  
10:39:16 5 of these categories. You're a restaurant, or a bar, or a  
10:39:23 6 club, right?

10:39:25 7 MR. ABRAMS: Or similar commercial enterprise,  
10:39:27 8 yes.

10:39:27 9 THE COURT: Or a similar commercial enterprise.  
10:39:30 10 What does that mean? What is a similar commercial  
10:39:33 11 enterprise?

10:39:35 12 MR. ABRAMS: It's --

10:39:35 13 THE COURT: Can you tell me?

10:39:38 14 MR. ABRAMS: I think it's something that is as  
10:39:45 15 the statute or as the amended rule suggests, something  
10:39:48 16 similar to what is in there, which is a nightclub, a bar,  
10:39:51 17 or a restaurant. So.

10:39:52 18 THE COURT: A sexually oriented business is a  
10:39:55 19 nightclub, bar, restaurant, or similar commercial  
10:39:59 20 enterprise. I don't know what that means. I'm trying to  
10:40:03 21 figure out what a similar commercial enterprise would be.  
10:40:06 22 That's why I said, what about a performance, say, at the  
10:40:11 23 Majestic Theater in San Antonio where they do serve  
10:40:14 24 alcohol, and people go and watch, and they do have modern  
10:40:20 25 dance performances there where parts of women's bodies are

10:40:25 1 exposed to a greater degree than would be otherwise  
10:40:29 2 allowed by this statute, then the question is, are they a  
10:40:37 3 similarly situated thing?

10:40:42 4 MR. ABRAMS: I don't believe a concert hall or a  
10:40:44 5 ballet would be similar to --

10:40:46 6 THE COURT: This isn't a concert hall. It's a  
10:40:48 7 theater.

10:40:49 8 MR. ABRAMS: Or theater.

10:40:50 9 THE COURT: I said -- so you say that isn't.

10:40:53 10 MR. ABRAMS: No.

10:40:53 11 THE COURT: But if I asked somebody else, they  
10:40:55 12 might say that it was.

10:40:57 13 MR. ABRAMS: I don't believe so. I think the --

10:40:58 14 THE COURT: You don't believe so.

10:41:00 15 MR. ABRAMS: No, your Honor.

10:41:01 16 THE COURT: Okay. Well, that's what I've gotta  
10:41:05 17 figure out. But the problem here is that it's a very  
10:41:09 18 broad statute. When you put tag lines on a statute like  
10:41:14 19 "or similarly situated," that's the kind of thing the  
10:41:19 20 Supreme Court has struck down as being vague.

10:41:25 21 MR. ABRAMS: Well, we disagree that it's vague.  
10:41:27 22 I mean, in fact, well, the Court --

10:41:29 23 THE COURT: Can you tell me what a similarly  
10:41:31 24 situated business would be?

10:41:34 25 MR. ABRAMS: In fact, I believe the Court granted

10:41:37 1 our motion for summary judgment on the vagueness claim.

10:41:40 2 THE COURT: Yeah. I may be revisiting it in  
10:41:43 3 light of this. What is the similarly situated? Can you  
10:41:50 4 name one?

10:41:52 5 MR. ABRAMS: I think -- yeah. Sure. A cafe or a  
10:42:00 6 bistro perhaps.

10:42:03 7 THE COURT: Pizza parlor, maybe.

10:42:10 8 MR. ABRAMS: Possibly. Sure. It's a restaurant.

10:42:13 9 THE COURT: Has the agency ever cited anyone or  
10:42:20 10 any entity that runs a pizza parlor or other such where  
10:42:32 11 they have live entertainment -- let's say, they have  
10:42:35 12 singers in the corner. You've seen this, right, western  
10:42:38 13 clubs, they have singers. Other clubs, they have singers,  
10:42:41 14 people come in and sing, and sometimes the women are  
10:42:45 15 wearing things that they wouldn't necessarily wear outside  
10:42:48 16 of a performance.

10:42:51 17 MR. ABRAMS: Your Honor, the best answer I can  
10:42:52 18 give is, I don't know the answer.

10:42:54 19 THE COURT: Yeah. I don't think I would know,  
10:42:55 20 and I doubt it. But I would be surprised.

10:43:03 21 MR. ABRAMS: Your Honor, I believe we had last  
10:43:05 22 stood up to object to Exhibit 11 to make --

10:43:08 23 THE COURT: Your objection's overruled because  
10:43:12 24 this is, I assume, a waitress?

10:43:14 25 MR. WALLACE: Yes, your Honor.

10:43:17 1 Q. (BY MR. WALLACE) Mr. Craft.

10:43:19 2 A. Yes, sir.

10:43:19 3 Q. On page 2 of Exhibit 11, which is up on the screen

10:43:24 4 before you, that's at Tight Ends, correct?

10:43:27 5 A. That is correct.

10:43:28 6 Q. Does that depict on their Instagram social media

10:43:34 7 page, a waitress?

10:43:38 8 A. A what?

10:43:39 9 Q. A waitress?

10:43:39 10 A. Yes. Depicts an entertainer.

10:43:44 11 Q. Okay. And what does that entertainer have in her

10:43:46 12 hand?

10:43:47 13 A. A beer.

10:43:47 14 Q. Are you -- would you assume -- would it be a rational

10:43:51 15 assumption to make that there is the service of or

10:43:55 16 consumption of alcoholic beverages at Tight Ends?

10:43:58 17 A. From looking at the picture, yes.

10:44:00 18 Q. And you've been to Tight Ends, haven't you, and they

10:44:04 19 serve alcoholic beverages?

10:44:05 20 A. So I know they do, yes.

10:44:07 21 Q. To two or more persons, correct?

10:44:08 22 A. I've had one there.

10:44:09 23 Q. And are the women in there dressed in a state of

10:44:13 24 nudity under the statute?

10:44:14 25 A. Yes.



10:44:15 1 Q. Are their buttocks exposed?

10:44:16 2 A. Yes.

10:44:17 3 Q. Are their breasts below the top of the areola  
10:44:19 4 exposed?

10:44:20 5 A. Yes.

10:44:20 6 Q. And the picture that is on page 2 on Exhibit 11, is  
10:44:24 7 her buttocks being exposed?

10:44:31 8 A. From looking at it, I would assume it is.

10:44:33 9 Q. And are her breasts below the top of the areola or  
10:44:37 10 any portion of her breasts below the top of the areola  
10:44:39 11 exposed?

10:44:40 12 A. Yes, they are.

10:44:40 13 Q. All right. Are you familiar with the presumption  
10:44:43 14 that's in the rule, the amended rule?

10:44:45 15 A. Yes.

10:44:46 16 Q. All right. And it provides that the comptroller will  
10:44:51 17 presume that a business is a sexually oriented business if  
10:44:55 18 the business holds itself out as a sexually oriented  
10:44:59 19 business. Evidence the comptroller may consider includes  
10:45:03 20 social media, correct?

10:45:04 21 A. Correct.

10:45:05 22 Q. So the comptroller can make the presumption against  
10:45:07 23 Tight Ends if it wanted or chose to do so under the rule,  
10:45:12 24 correct?

10:45:13 25 A. That is correct.

10:45:13 1 Q. And assess a fee for every patron that walks into the  
10:45:17 2 front door of \$5, correct?

10:45:20 3 A. That's correct.

10:45:21 4 Q. All right. Now, I'd like you to turn to page 6 of  
10:45:28 5 Exhibit 11, and, sir, is that from the Twitter page of  
10:45:37 6 Tight Ends in Plano, Texas?

10:45:41 7 A. Yes, it is.

10:45:42 8 Q. All right. And what does the picture show?

10:45:44 9 A. It shows girls in bootie shorts with a shell covering  
10:45:53 10 a portion of their areola portion of their breasts.

10:45:58 11 Q. But is any portion of these three women's breasts  
10:46:04 12 below the top of the areola being exposed?

10:46:06 13 A. Absolutely.

10:46:07 14 Q. And have you been at this Tight Ends in Plano, Texas?

10:46:11 15 A. I have.

10:46:11 16 Q. And when at this Tight Ends in Plano, Texas, have you  
10:46:15 17 ever taken any pictures?

10:46:17 18 A. Yes, I have.

10:46:17 19 Q. Would you turn to Exhibit 13, please? Would you  
10:46:33 20 thumb through those pictures, please?

10:46:55 21 A. Okay.

10:46:56 22 Q. Are you familiar with those pictures?

10:46:58 23 A. I am.

10:46:58 24 Q. Did you take them?

10:46:59 25 A. Yes.

10:46:59 1 Q. Did you take them on October 2nd, 2019?

10:47:02 2 A. I did. I didn't -- I may not have taken all of them.

10:47:05 3 There's three of us there. But yes.

10:47:08 4 Q. These pictures were taken on October 2nd, 2019.

10:47:11 5 A. Correct. In my presence, if I didn't take them.

10:47:13 6 Q. On page 1 of Exhibit 13, that was taken at Tight Ends

10:47:19 7 Sports Bar & Grill at Plano, Texas, wasn't it?

10:47:22 8 A. Absolutely.

10:47:24 9 Q. And there is -- tell the Court what you see.

10:47:30 10 A. Do what?

10:47:30 11 Q. Tell the Court what you see in that picture.

10:47:32 12 A. Well, you've got a girl sitting there in a bra and a

10:47:36 13 pair of thong panties, exposing her buttocks. You can't

10:47:40 14 see her front in this picture, but she's also exposing

10:47:43 15 portions of her breasts that would be against the rule,

10:47:49 16 sitting with a customer, having a drink, entertaining.

10:47:54 17 That's why the guys go in there. It's not the food.

10:47:57 18 Q. She's clearly not taking an order and going and

10:48:01 19 fetching food for him, is she?

10:48:02 20 A. No.

10:48:02 21 Q. What is she doing?

10:48:04 22 A. Entertaining him, talking to him.

10:48:06 23 Q. Okay. Now, if you would, flip back to page -- the

10:48:09 24 ninth page of Exhibit 13.

10:48:24 25 A. Okay.

10:48:25 1 Q. Before we get to, specifically, page 9, sir, are  
10:48:28 2 these true and accurate pictures of what you saw at the  
10:48:34 3 bars on October 2nd, 2019?

10:48:37 4 A. Yes, sir.

10:48:38 5 Q. All right. Your Honor, we would move to admit  
10:48:40 6 Exhibit No. 13.

10:48:43 7 MR. ABRAMS: No objection, your Honor.

10:48:44 8 THE COURT: Be received.

10:48:52 9 Q. (BY MR. WALLACE) What does Exhibit -- or the ninth  
10:48:54 10 page of Exhibit 13 show?

10:48:56 11 A. It shows a girl wearing a traditional bikini,  
10:49:00 12 triangle bikini. If you'll look, it's showing on the  
10:49:06 13 inside of the breast, it's showing part of the breast  
10:49:09 14 below the top of the areola, and if you look at the very  
10:49:12 15 bottom of the bikini, there's about an inch, inch and a  
10:49:16 16 half of her breast before it actually hits her ribcage  
10:49:19 17 body that's also showing.

10:49:22 18 Q. I'm going to draw on the one that's on the screen.

10:49:24 19 But --

10:49:25 20 A. Right.

10:49:25 21 Q. -- would that portion of her breasts be exposed?

10:49:27 22 A. Yes.

10:49:29 23 Q. And what was she doing when you took this picture?

10:49:32 24 A. Sitting with a customer.

10:49:34 25 Q. I'm sorry?

10:49:35 1 A. Sitting with a customer, talking, entertaining them.

10:49:39 2 Q. And would you turn to the tenth page of Exhibit 13,

10:49:43 3 please?

10:49:43 4 A. Yes.

10:49:44 5 Q. Tell the Court what that depicts, please.

10:49:56 6 A. It's much clearer when you're looking at the picture,

10:49:59 7 but it's the same girl that was sitting down, I believe,

10:50:01 8 that's wearing the peach-colored bra and thong panties.

10:50:07 9 Q. Okay. And last, but not least, the eleventh page and

10:50:10 10 that was at Tight Ends Sports Bar & Grill?

10:50:12 11 A. Yes, sir.

10:50:13 12 Q. In Plano, Texas?

10:50:14 13 A. Yes, sir.

10:50:15 14 Q. Whose social media shows that they're offering nudity

10:50:20 15 under the statute?

10:50:21 16 A. Right.

10:50:22 17 Q. Okay. So on page -- the eleventh page of Exhibit 13,

10:50:27 18 all right, does that show an entertainer sitting with a

10:50:30 19 customer?

10:50:31 20 A. Yes.

10:50:31 21 Q. What is she doing with this customer? You were

10:50:33 22 there?

10:50:34 23 A. She's entertaining him. She's sitting there for a

10:50:36 24 while. They train their girls when they go up, they may

10:50:39 25 take orders, but to sit with the customer, to have a seat,

10:50:43 1 to talk to them.

10:50:44 2 Q. For what purpose?

10:50:45 3 A. To keep them in there, entertain them. That's why

10:50:48 4 guys come back.

10:50:49 5 Q. Is that what you did at -- hold on -- Sports City and

10:50:58 6 Sneaky Pete's?

10:50:59 7 A. To some degree, yes.

10:51:02 8 THE COURT: So what's the idea? The idea is to

10:51:05 9 get them to continue to buy alcohol?

10:51:08 10 THE WITNESS: Alcohol, food, just keep them

10:51:10 11 staying in there, spending money. Correct.

10:51:13 12 THE COURT: Do they have to pay a cover charge to

10:51:15 13 sit with the young woman?

10:51:19 14 THE WITNESS: No. They do not.

10:51:21 15 Q. (BY MR. WALLACE) And for the \$5 fee statute to apply

10:51:24 16 to an adult cabaret, the adult cabaret is under no

10:51:27 17 requirement to charge a cover charge, right?

10:51:30 18 A. Correct.

10:51:30 19 Q. Some of the cabarets throughout Texas don't charge a

10:51:34 20 cover charge, do they?

10:51:34 21 A. Very true.

10:51:35 22 Q. While others do.

10:51:37 23 A. True.

10:51:38 24 Q. All right. Now, this was Tight Ends?

10:51:42 25 A. Correct.

10:51:43 1 Q. Sports Bar & Grill.

10:51:46 2 A. And let me also explain that these girls by doing  
10:51:49 3 this, they make a lot more money in tips than a  
10:51:53 4 traditional waitress would make at 15 or 20 percent. And  
10:51:58 5 I'm going to tell you, the average is about 12 to 15  
10:52:01 6 percent on what a waitress would make on a food service  
10:52:04 7 staff.

10:52:16 8 THE COURT: They don't -- I mean, there's no quid  
10:52:18 9 pro quo here. There's no sex acts allowed, no touching  
10:52:21 10 allowed.

10:52:22 11 THE WITNESS: No.

10:52:23 12 THE COURT: There's none of that.

10:52:24 13 THE WITNESS: No. It's a legitimate -- I mean,  
10:52:32 14 there's nothing -- no prostitution.

10:52:35 15 THE COURT: Legal.

10:52:38 16 THE WITNESS: Yes, sir. Other than the fact they  
10:52:39 17 don't have a sexually oriented business license to  
10:52:43 18 operate.

10:52:44 19 Q. (BY MR. WALLACE) And there's no sex going on inside  
10:52:46 20 your adult cabarets, is there, sir?

10:52:48 21 A. No.

10:52:49 22 Q. That would be illegal, right?

10:52:50 23 A. It would be illegal.

10:52:51 24 Q. And there's no prostitution going on.

10:52:52 25 A. Correct. I could mention one thing, though. You

10:52:56 1 talked about Sneaky Pete's. Sneaky Pete's is on the lake  
10:52:59 2 and it's lake-generated, and during the summer it's crazy.  
10:53:03 3 Not only do the -- during the summer, does the staff wear  
10:53:08 4 bikinis, which are going to expose parts of the buttocks  
10:53:14 5 and area. You have customers coming in on their boats  
10:53:17 6 from what they call party cove, which is just a crazy  
10:53:22 7 place on Lake Lewisville, come in to eat, drink, we have a  
10:53:25 8 pool, we have a band, and the customers, girls would jump  
10:53:29 9 up on the tables and they'd start dancing, customers. I  
10:53:32 10 mean, they're dancing, they're entertaining. They're not  
10:53:35 11 part of our staff, but they're in there and they're in  
10:53:39 12 thong bikinis, many of them.

10:53:42 13 Q. On October 2nd, 2019, did you go to Knockout Sports  
10:53:46 14 Bar in Dallas, Texas?

10:53:47 15 A. I did.

10:53:48 16 Q. And did you take photographs?

10:53:49 17 A. I did.

10:53:50 18 Q. And if you'll turn to page 2 of Exhibit 13.

10:53:56 19 A. Yes.

10:53:56 20 Q. Was this one of the entertainers that you came across  
10:54:00 21 there?

10:54:00 22 A. Yes.

10:54:01 23 Q. All right. Is her buttocks exposed?

10:54:03 24 A. It is.

10:54:06 25 Q. Were there two or more people present?



10:54:07 1 A. There were.

10:54:08 2 Q. Was there entertainment being provided?

10:54:10 3 A. There was.

10:54:10 4 Q. Was that nude entertainment?

10:54:12 5 A. Yes.

10:54:13 6 Q. Was alcohol being consumed?

10:54:14 7 A. Yes.

10:54:15 8 Q. And if you'll turn to page 3 of -- the third page of

10:54:23 9 Exhibit 13.

10:54:23 10 A. Correct.

10:54:24 11 Q. All right. Who's depicted in that picture?

10:54:31 12 A. The girl that you are seeing the back of and Mr.

10:54:34 13 Langan.

10:54:36 14 Q. Mr. Langan here in the courtroom with us today?

10:54:38 15 A. Correct.

10:54:39 16 THE COURT: I might have the wrong picture here.

10:54:41 17 THE WITNESS: No. That one right there.

10:54:42 18 THE COURT: This is the picture.

10:54:43 19 THE WITNESS: Yes, sir.

10:54:45 20 THE COURT: I don't see his back. I see his

10:54:47 21 front.

10:54:47 22 THE WITNESS: No. It's the same girl that we saw

10:54:49 23 the back of on the previous page.

10:54:50 24 THE COURT: Oh, I see.

10:54:52 25 THE WITNESS: It's the same girl.

10:54:53 1 THE COURT: I thought you were telling me Mr.  
10:54:56 2 Langan's back. I was saying, what?

10:54:59 3 Q. (BY MR. WALLACE) But in that picture is Mr. Langan  
10:55:02 4 who's here in the courtroom today.

10:55:04 5 A. Yes.

10:55:04 6 Q. Okay. And is this woman's breasts below the top of  
10:55:08 7 the areola exposed?

10:55:09 8 A. Yes.

10:55:10 9 Q. And did you -- do you know where this woman works  
10:55:18 10 other than Knockout Sports Bar?

10:55:20 11 A. Yes.

10:55:20 12 Q. Where?

10:55:21 13 A. Baby Dolls Saloon.

10:55:23 14 Q. The club you own or are president of?

10:55:26 15 A. Correct.

10:55:29 16 Q. Is this the same kind of outfit that she could wear  
10:55:32 17 while entertaining at Baby Dolls?

10:55:36 18 A. She could. We suggest when they're on the floor,  
10:55:41 19 walking around, that they wear more clothing than that.  
10:55:45 20 They're independent contractors, so we can't force them.  
10:55:47 21 We suggest that they put on more clothes on the floor and  
10:55:51 22 leave the stripping down to when they get on stage or  
10:55:57 23 doing a table dance. But yes, she could.

10:56:00 24 Q. Now, I notice in the bottom of the picture, you can't  
10:56:05 25 see it very well on the screen, but what's in this woman's

10:56:07 1 hand?

10:56:07 2 A. A \$20 bill.

10:56:08 3 Q. Do you know where she got that \$20?

10:56:10 4 A. Where she got it?

10:56:11 5 Q. Yes.

10:56:11 6 A. From Eric.

10:56:12 7 Q. From Mr. Langan?

10:56:13 8 A. Yes.

10:56:14 9 Q. Did Mr. Langan have to pay her in order to take a

10:56:17 10 photograph?

10:56:17 11 A. She's an entertainer, of course. That's the girls

10:56:20 12 that work here, they serve, but they entertain. And yes,

10:56:23 13 that's for \$20, you can take her picture.

10:56:26 14 Q. That's how they make money, right?

10:56:29 15 A. Absolutely.

10:56:29 16 Q. Like getting a dance at a topless club for \$20,

10:56:33 17 right?

10:56:33 18 A. Traditional dances at clubs would be \$20. Correct.

10:56:38 19 Q. But at Knockout Sports Bar & Grill, for \$20, you get

10:56:42 20 a picture.

10:56:43 21 A. Sure.

10:56:43 22 Q. From an entertainer.

10:56:44 23 A. Yeah.

10:56:45 24 Q. Who's nude.

10:56:46 25 A. Correct. Probably -- she'd probably sit for you

10:56:52 1 longer for another 20, or another 20, or you're buying her  
10:56:56 2 time. She's entertaining.

10:56:58 3 Q. Did you go to Wild Pitch Sports Bar & Grill?

10:57:02 4 A. Yes, we did.

10:57:03 5 Q. In Frisco, Texas?

10:57:05 6 A. Yes, we did.

10:57:06 7 Q. You took pictures?

10:57:07 8 A. Yes.

10:57:07 9 Q. I'll show you one. I don't know how well it will  
10:57:10 10 show up on the screen, but can you tell the Judge what  
10:57:12 11 these women are wearing?

10:57:15 12 A. They're wearing basically a thong bottom and a  
10:57:21 13 bra-like top, which exposes a portion of the breasts below  
10:57:23 14 the top of the areola and the bottom. Kind of hard to  
10:57:26 15 tell. I was there, so I can tell you, it's definitely a  
10:57:30 16 thong-type bottom, which exposes the majority of the  
10:57:33 17 buttocks.

10:57:34 18 Q. And on the fourth page of Exhibit 13, are they  
10:57:36 19 wearing something on their back? Can you tell?

10:57:40 20 A. Yeah. They have wings on like I took it as a take on  
10:57:47 21 Victoria's Secret models. They had wings on, but they  
10:57:51 22 were black wings, so they were the bad angels, I guess.

10:57:55 23 Q. And they're sitting at the table. These two ladies  
10:57:57 24 are sitting at the table with a customer.

10:58:00 25 A. And drinking.

10:58:01 1 Q. And drinking. Do you ever see them serve any food to  
10:58:04 2 this man?

10:58:04 3 A. Not at the time I was in there. Not looking at these  
10:58:09 4 girls.

10:58:09 5 Q. What were they doing?

10:58:10 6 A. Sitting there, talking and just entertaining, and  
10:58:13 7 laughing, telling jokes, I mean, just going back and  
10:58:17 8 forth, having fun.

10:58:19 9 Q. Wearing a costume?

10:58:20 10 A. Making money.

10:58:24 11 Q. And if you look at page 5 of Exhibit 13 or the fifth  
10:58:29 12 page of Exhibit 13.

10:58:30 13 A. Yes.

10:58:30 14 Q. Is that a picture also taken at Wild Pitch Sports Bar  
10:58:34 15 & Grill?

10:58:34 16 A. Yes.

10:58:34 17 Q. Same thing with page 6 and the sixth page and the  
10:58:39 18 seventh page of Exhibit 13, those were taken at Wild Pitch  
10:58:43 19 Sports Bar & Grill?

10:58:43 20 A. Yes, they were.

10:58:45 21 Q. Last, but not least, and I'll end this, did you go to  
10:58:48 22 Ojos Locos?

10:58:49 23 A. I did. I actually go there for lunch quite a bit  
10:58:58 24 because it's not too far from our office, and they do have  
10:59:01 25 good food.

10:59:02 1 Q. And was that at Dallas, Texas?

10:59:06 2 A. It is.

10:59:07 3 Q. Did you see people there who had exposed buttocks?

10:59:10 4 A. Yes.

10:59:11 5 Q. Did you see people there with breasts exposed below  
10:59:15 6 the top of their areola?

10:59:16 7 A. Yes.

10:59:17 8 Q. Were there more than 40 people present?

10:59:20 9 A. Yes.

10:59:20 10 Q. And were you there for lunch?

10:59:22 11 A. Yes.

10:59:22 12 Q. How many, if you remember, were women?

10:59:27 13 A. As far as customers?

10:59:29 14 Q. Yes.

10:59:29 15 A. Counted two.

10:59:30 16 Q. Everybody else was a man, right?

10:59:32 17 A. Correct.

10:59:32 18 Q. Were they being entertained by these women who were  
10:59:36 19 scantily clad?

10:59:37 20 A. Virtually, every table had girls sitting at it for  
10:59:43 21 extended periods, at one time or another.

10:59:48 22 Q. You've been in this business how long, sir?

10:59:51 23 A. Since 1987.

10:59:53 24 Q. If at these restaurants that we've talked about  
10:59:57 25 today, Ojos Locas, Wild Pitch Sports Bar & Grill, Tight

11:00:03 1 Ends Sports Bar & Grill, Knockout Sports Bar, if their  
11:00:11 2 waiters or other persons were people -- were men dressed  
11:00:18 3 like me, from your experience in this business, how long  
11:00:24 4 would their doors be open?

11:00:28 5 A. If men dressed like you are the servers?

11:00:32 6 Q. Yes.

11:00:33 7 A. I'm not sure they would open, but not very long.

11:00:37 8 Q. They're generating income from the fact that they  
11:00:43 9 provide personnel who are nude or seminude under the  
11:00:50 10 statute, correct?

11:00:50 11 A. The whole concept is to serve food and alcohol and  
11:00:54 12 have pretty girls that are friendly that will sit down and  
11:00:57 13 talk to you.

11:00:59 14 Q. And are they providing, from your perspective in this  
11:01:02 15 business, entertainment?

11:01:04 16 A. Sure. Not just entertainment at the table, but you  
11:01:06 17 will see, they'll -- certain songs will come on and  
11:01:11 18 they'll all stand up and dance. They'll do a  
11:01:13 19 choreographed dance. They'll jump on the bar, the table.  
11:01:16 20 They'll have hoo-la-hoops and they'll have a hoo-la-hoop  
11:01:20 21 contest. Sometimes get the crowd -- a guy from the crowd  
11:01:22 22 get up there, get interactive.

11:01:28 23 So yes, it's an entertainment place for guys  
11:01:30 24 where they can go and eat and feel special.

11:01:34 25 Q. Real quickly, let's go back to Exhibit 12, please,

11:01:37 1 and to your visit at Tight Ends Sports Bar & Grill. Is  
11:02:01 2 this something you took from the sports bar?

11:02:03 3 A. It is.

11:02:04 4 Q. Is that how the women are actually clad?

11:02:11 5 A. That's a good depiction. Some have less clothing on  
11:02:15 6 the top than a crop T-shirt, and some of the bottoms are  
11:02:20 7 smaller than this, and some maybe a little larger. That's  
11:02:24 8 a good depiction. Yes.

11:02:39 9 Q. In previous testimony, including affidavit testimony  
11:02:44 10 and deposition testimony in this case, you have said that  
11:02:47 11 the \$5 fee statute is being arbitrarily enforced against  
11:02:51 12 adult cabarets, correct?

11:02:52 13 A. That's correct.

11:02:54 14 Q. All right. And I believe that you said that it is  
11:02:59 15 not being enforced against concert venues, places like NRG  
11:03:05 16 Stadium where Beyonce performs, breastraunts like Tight  
11:03:12 17 Ends and Wild Pitch and burlesque shows; is that correct?

11:03:14 18 MR. ABRAMS: Objection. Foundation.

11:03:16 19 MR. WALLACE: I'm asking if that was his previous  
11:03:18 20 testimony.

11:03:18 21 THE COURT: Overruled.

11:03:20 22 A. Yes.

11:03:21 23 Q. (BY MR. WALLACE) Okay. Now, what is the basis of  
11:03:23 24 your opinion that it is being assessed against cabarets  
11:03:26 25 and not other bars, restaurants, or similarly situated



11:03:35 1 commercial enterprises?

11:03:36 2 A. What is my --

11:03:38 3 Q. What's the basis of your opinion that it's being  
11:03:40 4 assessed against cabarets and not other bars, restaurants  
11:03:44 5 and similarly situated businesses?

11:03:46 6 A. Well, I think the whole rule was adopted to target  
11:03:50 7 cabarets. It's clear if you read the rule, when they say  
11:03:53 8 what you can't wear for clothing, no one wears foam, no  
11:03:58 9 one wears wax. Latex is the only thing that I know that  
11:04:02 10 people will wear to cover up. Why would the other stuff  
11:04:05 11 be in there and they say latex if they weren't targeting  
11:04:10 12 cabarets?

11:04:10 13 Q. Do you speak with owners, managers and folks who are  
11:04:17 14 associated with these other places like Tight Ends?

11:04:23 15 MR. ABRAMS: Objection. Hearsay.

11:04:24 16 THE COURT: Sustained.

11:04:26 17 MR. WALLACE: I'm not asking what they said, your  
11:04:28 18 Honor.

11:04:28 19 Q. (BY MR. WALLACE) Do you speak with them?

11:04:30 20 A. Yes.

11:04:30 21 Q. Do you have association meetings with them?

11:04:33 22 A. Yes. We're -- I am and have been members of the  
11:04:39 23 Texas Restaurant Association, the local restaurant  
11:04:42 24 association, the TEA. There's many different trade  
11:04:45 25 organizations that we're involved with that we would go

11:04:50 1 to, we meet, we network, and we interchange this  
11:04:54 2 information back and forth. I'm going to tell you, they  
11:04:57 3 are scared to death that this is going to be enforced --

11:05:00 4 MR. ABRAMS: Objection to the extent it's going  
11:05:02 5 to hearsay.

11:05:02 6 THE COURT: Sustained.

11:05:03 7 Q. (BY MR. WALLACE) Have you reviewed -- you're familiar  
11:05:07 8 with the fact that an entity who has asked for a  
11:05:11 9 redetermination can have a hearing before an  
11:05:13 10 administrative law judge at the State Office of  
11:05:16 11 Administrative Hearings, correct?

11:05:17 12 A. Correct.

11:05:17 13 Q. And that the administrative law judge issues  
11:05:22 14 proposals for decisions, correct?

11:05:23 15 A. Correct.

11:05:24 16 Q. Have you reviewed proposals for decisions that relate  
11:05:27 17 to the assessment of the \$5 fee?

11:05:29 18 A. I have.

11:05:30 19 Q. And how many?

11:05:37 20 A. Scores of them.

11:05:38 21 Q. Scores of them. Were any of them that you reviewed  
11:05:44 22 deal with anything other than an adult cabaret?

11:05:49 23 A. No.

11:05:50 24 Q. Did any of them deal with something like Tight Ends,  
11:05:55 25 or NRG Stadium, or Warehouse Live, or Twin Peaks?

11:06:05 1 A. No.

11:06:06 2 Q. Are all of those places I just named providing for an  
11:06:15 3 audience two or more, nude entertainment as defined in the  
11:06:18 4 statute and under the amended rule while the consumption  
11:06:21 5 of alcohol is present?

11:06:23 6 MR. ABRAMS: Objection. It seems to call for a  
11:06:26 7 legal conclusion.

11:06:26 8 THE COURT: I agree. Objection is sustained.

11:06:30 9 Q. (BY MR. WALLACE) With respect to Ojos Locos, Knockout  
11:06:45 10 Sports Bar, Wild Pitch Sports Bar & Grill, the Tight Ends  
11:06:50 11 Sports Bar & Grill, are they providing nude entertainment  
11:06:54 12 as defined in the statute?

11:06:55 13 MR. ABRAMS: Again, objection. Calls for a legal  
11:06:57 14 conclusion.

11:07:03 15 THE COURT: A legal conclusion?

11:07:04 16 MR. ABRAMS: Yes. He's asking do they provide  
11:07:06 17 nude entertainment as called for in the statute. He's  
11:07:08 18 asking the witness to testify as to --

11:07:11 19 THE COURT: Well, I would agree with you. It's  
11:07:13 20 very difficult to do that in light of the fact that it  
11:07:15 21 says, and similarly situated businesses, I don't know what  
11:07:18 22 we're talking about. Are we talking about Hooters here?  
11:07:21 23 Is Hooters an adult entertainment forum under this  
11:07:24 24 statute? Is it? Would Hooters be covered?

11:07:30 25 MR. ABRAMS: I believe so. But.

11:07:31 1 THE COURT: You think so?

11:07:32 2 MR. ABRAMS: I believe. I mean, I don't know.

11:07:36 3 But I was just objecting to the extent it's calling for a  
11:07:40 4 legal conclusion.

11:07:40 5 THE COURT: Well, I think you're actually right.

11:07:44 6 I think it probably does call for him to be commenting

11:07:47 7 along the statute. He can certainly testify about what he

11:07:51 8 as an operator of these businesses could be concerned

11:08:00 9 about. But he can't testify as to what actually is the

11:08:06 10 four corners of the statute.

11:08:08 11 Q. (BY MR. WALLACE) Let me ask it a different way. Ojos

11:08:12 12 Locas, Knockout Sports Bar, Wild Pitch, Tight Ends, are

11:08:17 13 there entertainers present that are exposing their

11:08:24 14 buttocks and portions of their breasts below the top of

11:08:28 15 the areola?

11:08:28 16 A. Yes, sir.

11:08:31 17 Q. Are they serving alcohol?

11:08:33 18 A. Yes, they are.

11:08:33 19 Q. Are there two or more people present?

11:08:37 20 A. Absolutely.

11:08:37 21 Q. And is there entertainment going on?

11:08:40 22 A. Yes.

11:08:44 23 Q. And you have personal knowledge of that?

11:08:46 24 A. I do.

11:08:57 25 Q. Was that same kind of entertainment being provided at

11:09:04 1 -- when you were involved with Sports City and Sneaky  
11:09:07 2 Pete's back in early 2017?

11:09:09 3 A. To some degree, yes.

11:09:10 4 Q. At any time, did the comptroller assess Sneaky Pete's  
11:09:15 5 or Sports City with a \$5 fee assessment?

11:09:17 6 A. No.

11:09:20 7 Q. Nor did they assess the \$5 fee assessment to any of  
11:09:24 8 the entities in the scores of proposals for decisions you  
11:09:29 9 reviewed, correct?

11:09:30 10 A. Correct.

11:09:31 11 Q. All right. After talking with folks, after being --  
11:09:41 12 that are involved in what -- the entities like Wild Pitch  
11:09:49 13 and like Tight Ends, after being in this industry for all  
11:10:03 14 these years, after reading the PFDs, have you formed an  
11:10:08 15 opinion as to whether or not the comptroller is  
11:10:12 16 arbitrarily enforcing the \$5 fee statute against adult  
11:10:15 17 cabarets and not enforcing it against these other  
11:10:18 18 entities?

11:10:19 19 MR. ABRAMS: Objection. Calls for a legal  
11:10:21 20 conclusion.

11:10:22 21 THE COURT: Sustained.

11:10:24 22 MR. WALLACE: Judge, I'm asking for his  
11:10:26 23 perception.

11:10:27 24 THE COURT: Well, you need to lay more  
11:10:31 25 foundation.

11:10:31 1 Q. (BY MR. WALLACE) Okay. Do you know of any entity  
11:10:35 2 other than an adult cabaret to whom the \$5 fee has been  
11:10:41 3 assessed by the Texas State Comptroller?

11:10:48 4 A. No.

11:10:50 5 Q. And you have wide involvement with clubs, businesses,  
11:10:57 6 sports bars, adult cabarets and non-adult cabarets  
11:11:00 7 throughout Texas, correct?

11:11:01 8 A. Correct. The only thing I would say is, some latex  
11:11:06 9 clubs that were outside of the scope, they've tried to  
11:11:10 10 enforce against them, but those are cabarets.

11:11:48 11 MR. WALLACE: If I can have just a minute, your  
11:11:50 12 Honor, I'll try to shorten up what I'm doing here.

11:12:39 13 Q. (BY MR. WALLACE) Mr. Craft, are you familiar with an  
11:12:43 14 entity known as WL York, Inc?

11:12:50 15 A. Yeah. That -- I'm trying to think where it is. I'm  
11:12:55 16 familiar with the corporate name.

11:12:56 17 Q. Well, let me ask you this. Are you familiar with an  
11:13:01 18 adult cabaret called Centerfolds?

11:13:05 19 A. Yes.

11:13:05 20 Q. And where is that located?

11:13:06 21 A. In Houston, Texas.

11:13:07 22 Q. All right. And you're familiar with that business?

11:13:09 23 A. Yes.

11:13:11 24 Q. Okay. Can you identify what that is, sir?

11:14:30 25 MR. ABRAMS: Mr. Wallace, have you produced this

11:14:33 1 to us?

11:14:35 2 MR. WALLACE: These are your documents.

11:14:40 3 MR. ABRAMS: Did we produce them to you?

11:14:42 4 MR. WALLACE: Yeah. These came from the Office  
11:14:44 5 of the State Comptroller.

11:14:49 6 MR. ABRAMS: Did they produce in this case?  
11:14:56 7 We've never seen this.

11:14:57 8 MR. WALLACE: I believe it was in this case. I  
11:14:59 9 don't have the Bates numbers.

11:15:06 10 MR. ABRAMS: When were they produced?

11:15:08 11 MS. HARGIS: These were not part of the  
11:15:09 12 discovery?

11:15:58 13 Q. (BY MR. WALLACE) Let me ask, do you know what this  
11:15:59 14 is?

11:15:59 15 A. Yes.

11:15:59 16 Q. What is it?

11:16:00 17 A. It's SOB assessment for Centerfolds for the first,  
11:16:04 18 second, third and fourth quarters of 2009, 2010, and the  
11:16:09 19 first quarter and second quarter, I believe, of 2011.

11:16:15 20 Q. And these are quarter-by-quarter tax assessments  
11:16:18 21 against WL York for the sexually oriented business fee,  
11:16:22 22 correct?

11:16:22 23 A. Correct.

11:16:23 24 Q. And let's just look at the first page, the estimated  
11:16:29 25 tax is 55,125, correct?

11:16:31 1 A. That is correct.

11:16:32 2 MR. ABRAMS: Your Honor, just for the record,  
11:16:33 3 we'd like to object that we've never seen this document  
11:16:35 4 before and it wasn't produced in discovery. Just to make  
11:16:38 5 that objection for the record.

11:16:39 6 THE COURT: What is it?

11:16:40 7 MR. WALLACE: These are the tax assessments  
11:16:41 8 issued by the Texas State Comptroller, the party who is a  
11:16:45 9 defendant in this case, to an entity called WL York, Inc.,  
11:16:49 10 doing business as Centerfolds.

11:16:52 11 THE COURT: But why weren't they produced? Where  
11:16:56 12 did you get them?

11:16:57 13 MR. WALLACE: I got them from WL York, Inc., a  
11:17:00 14 member of the Texas Entertainment Association.

11:17:04 15 THE COURT: I see.

11:17:05 16 MR. ABRAMS: We did not see this document. The  
11:17:07 17 production was made in March of '18, and this document is  
11:17:10 18 dated June of 2018.

11:17:10 19 THE COURT: Is there any concern about the  
11:17:12 20 authenticity of the document?

11:17:15 21 MR. ABRAMS: We'd like a chance to review it and  
11:17:18 22 make a determination.

11:17:19 23 THE COURT: All right. I'm going to withhold  
11:17:22 24 admission of the document until they have a chance to look  
11:17:24 25 at it carefully.



11:17:25 1 MR. WALLACE: Could we take just a break for  
11:17:27 2 maybe a couple of minutes while they have a review?

11:17:30 3 THE COURT: Well, I guess we could take an early  
11:17:33 4 lunch. Let's take an early lunch. That will give you a  
11:17:35 5 chance to look at it, okay?

11:17:37 6 MR. ABRAMS: Thank you, your Honor.

11:17:38 7 THE COURT: All right. We could stand in recess.  
11:17:48 8 We'll return at about 1:15 or so, if assuming we have  
11:17:52 9 everything.

13:10:20 10 (Lunch recess.)

13:20:57 11 THE COURT: All right. The Court would note the  
13:21:04 12 presence of all counsel.

13:21:07 13 Sir, you remain under oath.

13:21:11 14 THE WITNESS: Yes, sir.

13:21:13 15 THE COURT: You may continue.

13:21:13 16 MR. WALLACE: Thank you, your Honor.

13:21:14 17 Before our break, I had marked something as  
13:21:18 18 Exhibit No. 31. I'm going to withdraw that offer and move  
13:21:23 19 on to a completely different subject.

13:21:25 20 THE COURT: All right.

13:21:29 21 Q. (BY MR. WALLACE) Mr. Craft, are you familiar with an  
13:21:42 22 entity known as JAI Dining Services Odessa II, Inc?

13:21:51 23 A. Yes, sir.

13:21:51 24 Q. And that is a -- what kind of club is that?

13:21:58 25 A. It's a adult club, cabaret in Odessa.

13:22:02 1 Q. Do you know how they attire themselves?

13:22:06 2 A. They were in shorts, latex and bikini tops.

13:22:25 3 Q. I'm going to show you what's been previously marked  
13:22:27 4 as an exhibit. Did they wear -- what kind of shorts did  
13:22:31 5 they wear?

13:22:32 6 A. Boy shorts.

13:22:33 7 Q. Like that in Exhibit 30?

13:22:35 8 A. Yes, sir.

13:22:35 9 Q. And you said what did they do about their tops?

13:22:38 10 A. They wore latex and they wore bikini tops over the  
13:22:42 11 latex.

13:22:43 12 Q. Both?

13:22:43 13 A. Both.

13:22:44 14 Q. And what kind of bikini top was it?

13:22:48 15 A. Your traditional top -- bikini top that you would go  
13:22:52 16 to the store and buy. Full coverage. It wasn't the  
13:22:57 17 skimpy triangle. It was a full bikini top.

13:23:01 18 Q. Well, if they didn't have the latex underneath that,  
13:23:05 19 would it have exposed a portion -- a side portion of their  
13:23:09 20 breast below the top of the areola?

13:23:10 21 A. As I said, that's always a chance because bikini tops  
13:23:18 22 can move around.

13:23:19 23 Q. I am going to mark what --

13:23:21 24 THE COURT: So they had the latex covering, and  
13:23:23 25 then, they had a bikini top on top of the latex?

13:23:27 1 THE WITNESS: Yes, sir.

13:23:28 2 THE COURT: Okay.

13:23:29 3 Q. (BY MR. WALLACE) Do you know in this industry why  
13:23:32 4 some clubs choose to do that?

13:23:34 5 A. Excuse me?

13:23:34 6 Q. Do you know in this industry why some clubs choose to  
13:23:39 7 do both latex and a bikini top?

13:23:40 8 A. Just as a second layer of defense.

13:23:43 9 Q. Is it possible for a dancer who has been told "don't  
13:23:48 10 take your top off" to get involved in a dance with a  
13:23:51 11 customer and move their bikini top to the side so that  
13:23:55 12 they could show their breast?

13:23:56 13 A. Either on purpose or accidentally, yes, sir.

13:23:58 14 Q. Well, that happens in some clubs, doesn't it?

13:24:01 15 A. Yes, sir.

13:24:01 16 Q. And they expose their breasts when the club has told  
13:24:04 17 them not to expose their breasts?

13:24:06 18 A. Correct.

13:24:07 19 Q. And so, when doing both, it's kind of a failsafe?

13:24:09 20 A. Yes, sir.

13:24:10 21 Q. I'm going to now mark as Exhibit No. 31, an August  
13:24:18 22 9th, 2019 comptroller decision, and the accompanying  
13:24:27 23 proposal for decision from Administrative Law Judge Trevor  
13:24:30 24 Moore, and ask that it be admitted as Exhibit No. 31.

13:24:37 25 MR. ABRAMS: No objection.

13:24:38 1 THE COURT: It will be received.

13:24:40 2 Q. (BY MR. WALLACE) May I approach the witness, your  
13:24:43 3 Honor?

13:24:43 4 THE COURT: You may.

13:24:44 5 Q. (BY MR. WALLACE) Mr. Craft, you've seen this proposal  
13:24:55 6 for decision, have you not?

13:24:56 7 A. Yes, sir.

13:24:56 8 Q. And you've seen the comptroller's decision?

13:24:58 9 A. Yes, sir.

13:24:59 10 Q. After the administrative -- let me back up.

13:25:03 11 The Texas Comptroller assessed JAI Dining  
13:25:11 12 Services, Inc. Odessa -- let me start over.

13:25:16 13 The comptroller assessed JAI Dining Services  
13:25:20 14 Odessa, II, Inc. with fees under the SOB fee statute,  
13:25:31 15 correct?

13:25:32 16 A. That is correct.

13:25:33 17 Q. In the sum of hundreds of thousands of dollars,  
13:25:36 18 correct?

13:25:36 19 A. Yes, sir.

13:25:37 20 Q. And Odessa II asked for a redetermination?

13:25:40 21 A. Yes, sir.

13:25:40 22 Q. They went to the administrative law judge and had a  
13:25:43 23 full evidentiary hearing, correct?

13:25:44 24 A. They did.

13:25:45 25 Q. And what did the administrative law judge determine?

13:25:47 1 A. They determined they were not a sexually oriented  
13:25:51 2 business.  
13:25:51 3 Q. Go to the last page of Exhibit No. 31, please. And  
13:26:11 4 finding No. 13.  
13:26:13 5 A. Yes.  
13:26:13 6 Q. Please read it out loud.  
13:26:15 7 A. The greater weight of petitioner's evidence  
13:26:17 8 demonstrates that Rick's did not operate as a sexually  
13:26:22 9 oriented business during the assessed period.  
13:26:24 10 Q. That's during the assessment period, correct?  
13:26:27 11 A. I'm sorry, assessment period, yes.  
13:26:28 12 Q. And was that assessment period both before the new  
13:26:31 13 rule went into effect and after the new rule went into  
13:26:35 14 effect?  
13:26:35 15 A. That is correct.  
13:26:36 16 Q. And the Court determined they weren't -- the  
13:26:38 17 administrative law judge found they were not a sexually  
13:26:42 18 oriented business, correct?  
13:26:43 19 A. That is correct.  
13:26:43 20 Q. Now, if you'll turn back to the first page. And if  
13:26:49 21 -- that's the comptroller's decision?  
13:26:53 22 A. Yes.  
13:26:54 23 Q. And the comptroller adopted what the administrative  
13:26:56 24 law judge found, correct?  
13:26:58 25 A. That is correct.

13:26:59 1 Q. And that was done on July 15th, 2019?

13:27:03 2 A. Correct.

13:27:03 3 Q. Signed by Lisa Craven, the deputy comptroller?

13:27:06 4 A. Yes.

13:27:08 5 Q. Your Honor, I'll pass the witness.

13:27:25 6 CROSS-EXAMINATION

13:27:25 7 BY MR. ABRAMS:

13:27:46 8 Q. Good afternoon, Mr. Craft.

13:27:50 9 A. How are you?

13:27:51 10 Q. I'm good. Thank you.

13:27:52 11 Mr. Craft, for purposes of the record, I'll be  
13:27:57 12 referring to when the amended rule was enacted, and that  
13:28:00 13 was in January of 2017, correct?

13:28:02 14 A. That's correct.

13:28:04 15 Q. Mr. Craft, you mentioned attending a Beyonce concert  
13:28:11 16 at NRG Stadium.

13:28:12 17 A. Correct.

13:28:13 18 Q. When was that?

13:28:14 19 A. That was September of 2018, I believe. 2018 for  
13:28:20 20 sure.

13:28:23 21 Q. Mr. Craft, you haven't reviewed tax records that --  
13:28:30 22 from NRG Stadium that show whether or not it was assessed  
13:28:33 23 an SOB fee, correct?

13:28:34 24 A. I have not.

13:28:35 25 Q. And with respect to Beyonce, you haven't reviewed her

13:28:39 1 tax records to determine whether she was assessed an SOB  
13:28:43 2 fee, right?

13:28:45 3 A. I have not. That would probably be my wife doing  
13:28:47 4 that. She's a Beyonce fan.

13:28:49 5 Q. But you personally have not?

13:28:51 6 A. I have not.

13:28:51 7 Q. And, Mr. Craft, are you aware of how many enforcement  
13:28:55 8 officers the comptroller employs?

13:28:58 9 A. I'm not.

13:28:59 10 Q. So you weren't aware of the amount of resources that  
13:29:02 11 the comptroller can put into enforcing the SOB statute.

13:29:11 12 A. That would be up to the comptroller how much  
13:29:13 13 resources they put in. I've met several officers. They  
13:29:16 14 simply come in two or three at a time. Met some officers.  
13:29:20 15 I don't know how many there were or are.

13:29:23 16 Q. Just to clarify, you don't know how many enforcement  
13:29:26 17 officers are at the Comptroller's Office?

13:29:28 18 A. I do not.

13:29:29 19 Q. No further questions.

13:29:39 20 MR. WALLACE: Your Honor, I do not have any  
13:29:44 21 redirect. And at this time, the plaintiff would rest.

13:29:51 22 MS. HARGIS: Defense rests, as well.

13:29:52 23 THE COURT: Okay. Well, there's no rebuttal  
13:29:57 24 because they didn't put a case on. Here's what I think we  
13:30:04 25 should do. I don't really need oral argument in terms of

1 closing argument. That's -- I don't do that in my  
2 non-jury cases. You may be aware of that. You may not.  
3 But I don't ever have oral argument for closing argument.  
4 And, of course, jury cases, we do. But not non-jury  
5 cases. It isn't helpful.

6 What I do have, however, is counsel submit  
7 written closing arguments where they address the issues  
8 before the Court and point directly to the evidence which  
9 they believe supports their position. And you can address  
10 the evidence which -- well, of course, the state didn't  
11 put on any direct evidence, but you could certainly  
12 address the positions that the state has taken in the  
13 closing argument. And you can, of course, address  
14 plaintiff's case.

15 The closing argument should not be more than 25  
16 pages, and it will be submitted simultaneously. We're not  
17 going to be going back and forth, okay? You know what the  
18 issues are. There's no need. There's going to be no  
19 surprises here.

20 How much time do you think you need to submit  
21 that? I don't want to drag it out.

22 MS. HARGIS: Is that something that we get the  
23 reporter's record on beforehand or?

24 THE COURT: Well, I mean, if you really think you  
25 need it, then you can certainly order a transcript. I



13:31:44 1 mean, this has not been a long proceeding. So would you  
13:31:55 2 like to wait for the transcript?

13:31:57 3 MS. HARGIS: Yes, please.

13:31:57 4 THE COURT: All right. And how long do you think  
13:32:00 5 after you -- so let's say that she's going to take a week  
13:32:03 6 and a half, I'll give her eight days, okay, to get the  
13:32:07 7 transcript out. And how long after that would it take  
13:32:13 8 you? I mean, I think you could start working on it before  
13:32:15 9 the -- you got the transcript. I mean, you were all  
13:32:17 10 sitting here. Not a surprise.

13:32:21 11 MS. HARGIS: Couple of weeks.

13:32:22 12 THE COURT: Okay. I think that's fair. I'll do  
13:32:25 13 that. So let's put this out about.

13:32:34 14 THE CLERK: Thirty days.

13:32:36 15 THE COURT: Let's give them a month. So let's  
13:32:38 16 put it out a month from today.

13:32:41 17 THE CLERK: Friday, November 22nd.

13:32:44 18 THE COURT: Okay.

13:32:46 19 MR. ALLEN: The day after Thanksgiving.

13:32:49 20 MS. HARGIS: No. Thanksgiving's the week after.

13:32:52 21 MR. ALLEN: Okay. Great.

13:32:54 22 THE COURT: Why? Were you going to give me a  
13:32:55 23 turkey at the same time you -- I don't want a turkey in  
13:32:59 24 the form of a closing argument.

13:33:01 25 All right. Is that satisfactory?

13:33:03 1 MS. HARGIS: Yes, sir.

13:33:05 2 MR. ALLEN: It is.

13:33:06 3 THE COURT: Yeah, I've had three -- you know,

13:33:09 4 rarely do we get -- you could be seated. Thank you.

13:33:15 5 Rarely do we get a host of non-jury trials, but I had a

13:33:18 6 major case involving multiple murders on Fort Hood. That

13:33:24 7 case was tried here without a jury, and we're waiting on

13:33:29 8 that -- those closing arguments to be submitted. I just

13:33:32 9 did another one, and we're waiting for those closing

13:33:36 10 arguments. And now, I'll be waiting for these closing

13:33:39 11 arguments.

13:33:41 12 I actually had them waive a jury in a criminal

13:33:47 13 case, and so, we rarely see that. And so, I'm going to be

13:33:52 14 having to decide that case. But I'm giving them an

13:33:54 15 opportunity in that one, as well, to submit their closing

13:33:58 16 argument in writing. So I've got a lot of stuff to get

13:34:02 17 out.

13:34:05 18 But it shouldn't take too long beyond the, let's

13:34:08 19 say -- we'll certainly get your decision out before the

13:34:13 20 end of the year. Even though I'm going to have two others

13:34:18 21 that I have to get out at the same time. It's much easier

13:34:22 22 for a judge, I can promise you, to have a jury. Way

13:34:26 23 easier. All you do is work on the jury instructions and

13:34:35 24 preside over the trial, and when the jury reaches a

13:34:37 25 verdict, you know, you might have to deal with some

1 posttrial motions, but it's nothing like this.

2 All right. So are we done now? Anything else  
3 you'd like to put on the record?

4 MS. HARGIS: I believe we're done.

5 MR. WALLACE: Have we addressed the exhibits?

6 THE COURT: Have you got all the exhibits in?

7 MR. WALLACE: We're --

8 MR. ALLEN: We're fine with the list that  
9 Priscilla submitted to us. Are y'all good with it?

10 MS. HARGIS: Yes.

11 MR. ALLEN: Okay. Then we are.

12 THE COURT: Okay. We're all done with the  
13 exhibits?

14 MR. ALLEN: Yes.

15 THE COURT: Okay. All right. Very good. Then  
16 this trial is in recess.

17 (End of proceedings.)  
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\* \* \* \* \*

UNITED STATES DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Certified Realtime Reporter,  
Registered Merit Reporter, in my capacity as Official  
Court Reporter of the United States District Court,  
Western District of Texas, do certify that the foregoing  
is a correct transcript from the record of proceedings in  
the above-entitled matter.

I certify that the transcript fees and format comply  
with those prescribed by the Court and Judicial Conference  
of the United States.

WITNESS MY OFFICIAL HAND this the 20th day of February,  
2020.

/s/Lily I. Reznik  
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LILY I. REZNIK, OFFICIAL COURT REPORTER  
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)

13:35:33  
13:35:33